
Finance Committee

HB 1679

Brief Description: Excluding certain leasehold interests in amphitheaters from the leasehold excise tax.

Sponsors: Representatives Fromhold, Orcutt and Conway.

Brief Summary of Bill

- Exempts leasehold interests in certain public amphitheaters from the leasehold excise tax.

Hearing Date: 3/1/05

Staff: Mark Matteson (786-7145).

Background:

Leasehold Excise Tax. The leasehold excise tax applies to interests in publicly owned real or personal property. The tax is "in lieu" of property taxes that would otherwise be paid on the property if the property were privately held. The tax is generally measured by the amount of contract rent, which is the amount paid for the use of the public property. Contract rent includes cash payments to the lessor, amounts of rent from sublessees, and expenditures made by the lessee for improvements to the property if the value of the improvement inures to the owner. However, if the lease amount was not determined by competitive bidding or was not negotiated in such a way that the contract rent represents the fair market value of the lease, the Department of Revenue may determine the measure of tax using comparable market data and rate-of-return analyses.

The tax is imposed at a rate of 12 percent. A surtax brings the total rate to 12.84 percent. Local governments may impose an identical tax that is a credit against the state tax; counties may impose up to 6 percent and cities up to 4 percent. Counties must allow a credit for any city tax imposed. Thus the state rate is effectively 6.84 percent.

The Department administers the tax. The tax is collected by the public entity which is leasing the property and remitted to the state by the end of the month following the month the lease payment was collected. Federal lessees must remit payment directly to the Department annually. The state funds are deposited in the state general fund. Local tax receipts are distributed by the State Treasurer on a bimonthly basis and may be used for general purposes, except that county receipts must be further distributed to all local taxing districts (except cities), similarly to property taxes.

The leasehold excise tax includes a number of exemptions. Two examples include the interests in the Mariners' and Seahawks stadia.

The Department has issued rules that provide that a leasehold interest is established through both possession and use, and the lessee must have some identifiable dominion and control over a defined area to satisfy the possession element.

Clark County Amphitheater. The Clark County fairgrounds is the site of a an outdoor amphitheater with seating for 18,000 persons for concerts and other events. In 2002, the Clark County Commission approved a twenty year lease for the facility with Quincunx of Washington (QOW), a subsidiary of Q-Prime, a firm that manages a number of popular entertainers. Pursuant to the agreement, Quincunx built the amphitheater with its own funds. Upon completion of construction in July 2003, ownership and title to the amphitheater vested in the County. Under the lease terms, QOW is granted both the right of possession to the amphitheater and the use of parking areas as well, including non-exclusive easement to those areas.

Summary of Bill:

An exemption from the leasehold excise tax is provided for leasehold interests in certain public or entertainment areas of an amphitheater.

To qualify for the exemption, the following conditions must be met:

1. the lessee is responsible for the entire cost of constructing the amphitheater;
2. the lessee is not reimbursed for any of the construction costs;
3. both the lessee and the lessor sponsor events at the facility on a regular basis;
4. the lessee is responsible under the lease agreement to operate and maintain the facility;
5. the amphitheater has a seating capacity of over 17,000 persons; and
6. the amphitheater is located in a county with a population of between 350,000 and 400,000 persons.

The exemption applies not only to the entertainment areas but to box offices; entrance gates, ramps, stairs, and other access areas; parking areas; concessions, restaurants, and hospitality areas; press and media areas; retail sales and museum/exhibit areas; public restroom areas; storage and loading areas; kitchens or other work areas; and any personal property used for any of these purposes. The exemption does not apply to office areas used predominantly by the lessee.

Appropriation: None.

Fiscal Note: Requested on February 2, 2005.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.