Local Lodging Taxes:

Legal Requirements and Changes Needed

Taxes: ORS 320.300 – 320.990
Tourism Commission: ORS 284.101 – 284.146 and OAR 976-001-0010 *et seq*
Local: City/County adopted ordinances, charters

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Local Lodging Tax…. Basic Facts (1)

- Lodging taxes are a local option & rate is set by city/county
- 2015 report counted 85 of the 242 cities and 15 of the 36 counties with a local lodging tax.
- Tax must be computed on the total retail price. (ORS 320.350(7))
- Tax generally is a percentage of lodging charges incurred by the customer. (Some may do a flat fee.)
- Today, tax rate ranges are 2% to 13.5%. (Most are 6-9%.)

Local Lodging Tax…Basic Facts (2)

- Subject to tax: Facilities that are taxed vary by jurisdiction but most seem to apply state definitions and exemptions. (Exemption of private rental houses seems most common. Some prohibit short term residential rentals.)
- Timing: Collection schedule requirements are set by local jurisdiction- some are *quarterly* and some are *monthly*.
- Where to file: File with taxing district. However, some counties and cities have agreements to collect for each other or share revenues.
- Registration: Locals set own registration and/or licensing requirements for lodging providers and collectors of tax. Requirements vary.

State regulation of local government: (1)

- Collector reimbursement charges: state imposed moratorium on existing local reimbursement charge provisions AND local governments that impose a new tax after Jan. 1, 2001 or increase tax after that date must allow a lodging tax collector at least a 5% deduction from taxes (ORS 320.345)

- Thus, reimbursement amount is highly variable around the state (0-5%+). Collectors get another 5% reimbursement from the state!

(This preemption occurred with 2003 legislation.)

State regulation of local government: (2)

- Moratorium on use of local transient lodging tax revenues: may not decrease percentage of total TLT revenues that were actually expended or agreed to be expended to fund "tourism promotion" or "tourism-related facilities" as of July 2, 2003. (ORS 320.350)

Frozen at 2003 percentage

dedicated to tourism!

- Exception: if local government financing debt with TLT revenues on Nov. 26, 2003, must continue to finance debt until retirement of debt.

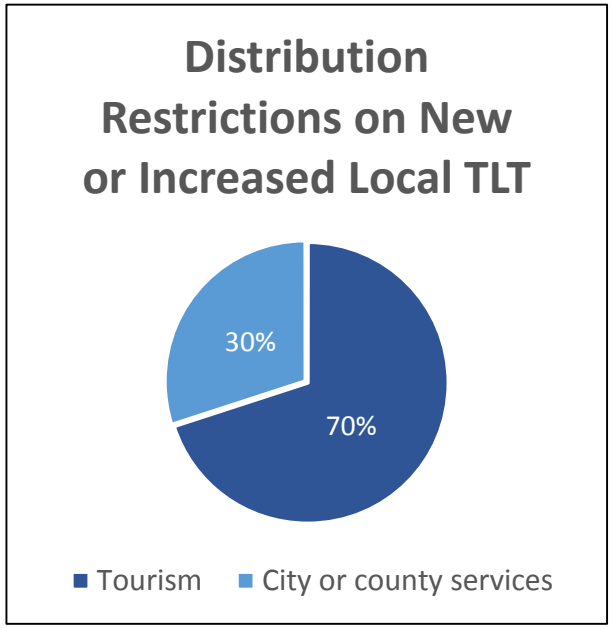
State regulation of local government: (3)

If local government <u>increases</u> lodging tax <u>or</u> imposes a <u>new</u> <u>tax</u> (post-2003):

- 70% of net revenue from the new or increased tax shall be used for: "**tourism promotion**" or "**tourism-related facilities**" or finance/refinance debt of "tourism-related facilities"
- No more than 30% may used to fund **city or county services** (See 2008 AG opinion re local infrastructure qualification)

Thus, total percentage of local tax revenues that are restricted to tourism is highly variable around the state. (Need pre and post- 2003 percentages to figure out number)

(Preemptions on local revenue use occurred with 2003 legislation.)



4 Key Definitions: (ORS 320.300):

#1

(7) **"Tourism promotion " means** any of the following activities:

(a) Advertising, publicizing or distributing information for the purpose of attracting and welcoming **tourists**;

(b) Conducting strategic planning and research necessary to stimulate future **tourism** development;

(c) Operating tourism promotion agencies; and

(d) Marketing special events and festivals designed to attract tourists.

4 Key Definitions: (ORS 320.300)

#2

(9) **"Tourism-related facility " means:**

(a) A **conference center**, **convention center** or **visitor information center**; and

(b) Other improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting **tourism** or accommodating **tourist** activities.

- Many cities and counties don't have a facility as defined by (9)(a)
- Subsection (b) is the catch-all for permitted use of revenues in the 70% category. It was intended to provide flexibility to cover roads, sewers, restrooms, etc. associated with tourism support. Still, it isn't as clear or as flexible as local governments would like. It has 3 components to qualify: 1) real property; 2) useful life of 10 or more years; and 3) substantial purpose of supporting tourism or accommodating tourist activities. (**See 2008 AG opinion**) (Complex!)

4 Key Definitions: (ORS 320.300)

#3 & 4

(6) **"Tourism" means** economic activity resulting from tourists.

(10) **"Tourist" means** a person who, for business, pleasure, recreation or participation in events related to the arts, heritage or culture, travels from the community in which that person is a resident to a different community that is separate, distinct from and unrelated to the person's community of residence, and that trip:
(a) Requires the person to travel more than 50 miles from the community of residence; or
(b) Includes an overnight stay.

State preemption on use of revenues has created basic services problems in some places

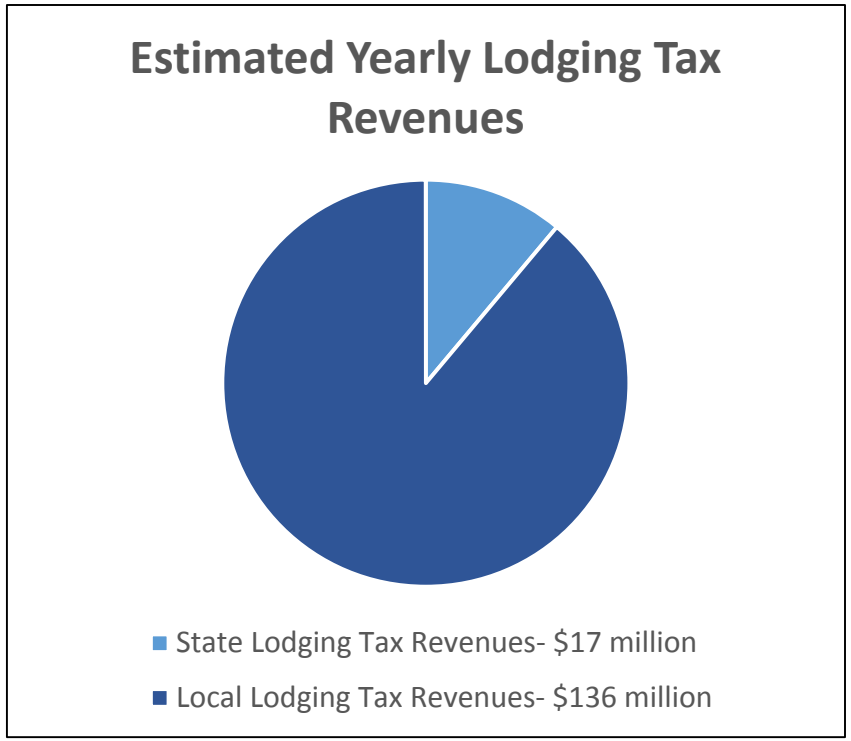
Prior to the state preemption, the

"majority of spending in all regions was in the categories of general services, tourism facilities, and tourism marketing; the proportion of TLT revenues spent by category varied across regions in Oregon. Use of local TLT revenues to fund general services was highest in Central Oregon, Southern Oregon, the Oregon Coast, and the Columbia River Gorge. Jurisdictions in these regions may be more dependent on tourism and TLT revenues to fund basic services, as well as funding and promoting tourism."

-- ECONorthwest Report (2008)

Local Lodging Tax Revenues

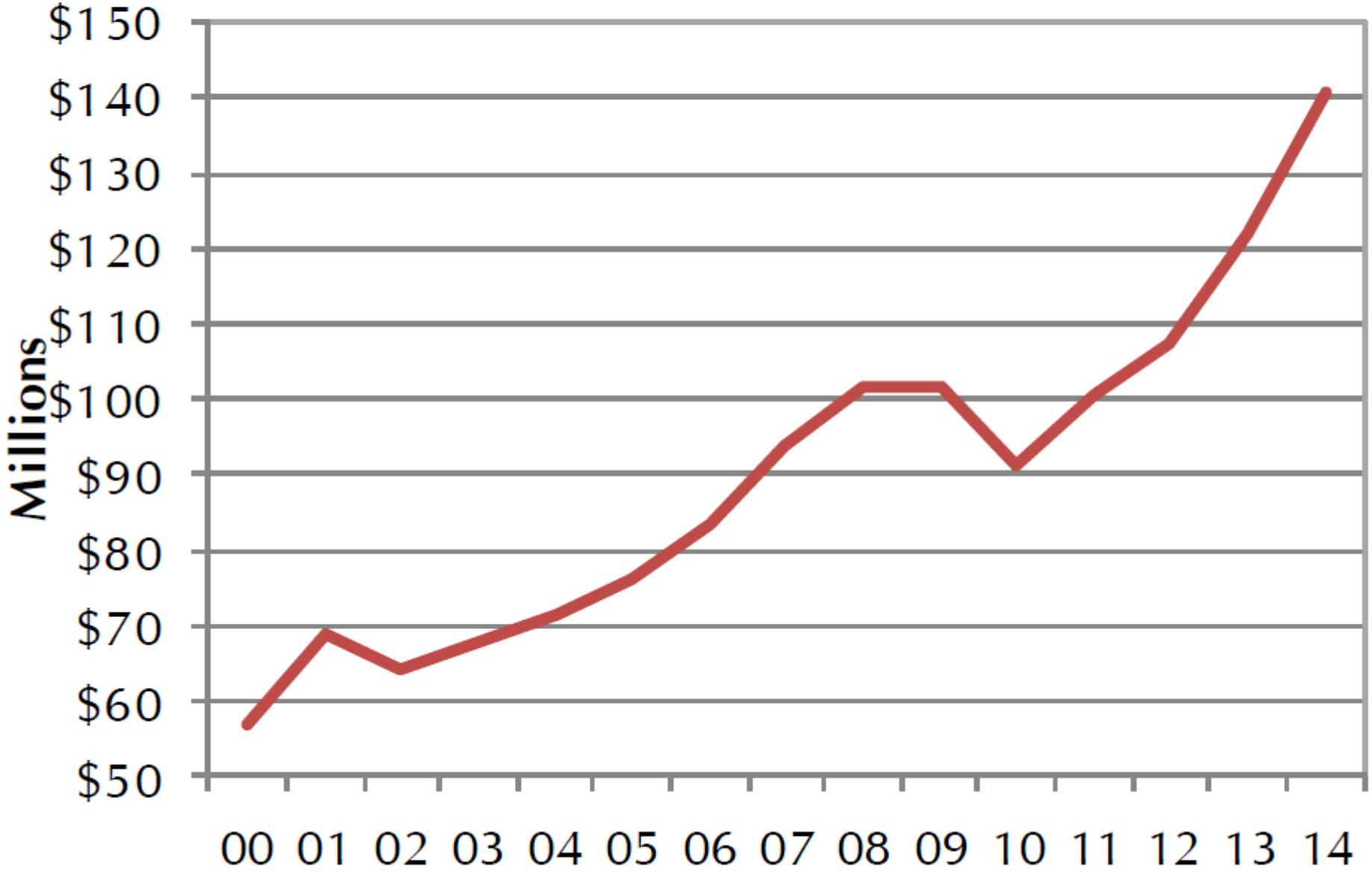
- In FY 2014, local lodging tax revenue totals were approximately **$136 million**—cities brought in just over $87 million
- Local lodging tax receipts continue to increase around the state. Total receipts increased by 15.2% from FY 2013 to FY 2014.
- There was a significant total increase recently as the Tourism Improvement District in Portland began levying an additional 2% on lodging establishments with more than 50 rooms on October 1, 2012.



-- source 2015 Dean Runyan Report

Oregon Local Lodging Tax Receipts

Fiscal Year ending June 30



Excerpt source: Oregon Travel Impacts 1991-2014, Dean Runyan Report, issued April 2015, prepared for Oregon Tourism Commission, page 213

Examples of Local Lodging Tax Revenues in three counties from 2004 to 2013:

Local Lodging Tax Receipts by Jurisdiction

Fiscal Year ending June 30

Amounts in $000

	Current Rate	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
DESCHUTES COUNTY											
Bend	10.0%	2,502	2,799	3,107	3,303	3,427	2,938	2,960	3,280	3,524	3,888
Redmond	9.0%	388	406	463	493	509	436	458	504	503	533
Sisters	8.0%	146	184	213	224	267	280	275	288	308	331
Unincorporated	7.0%	3,017	3,056	3,231	3,304	3,511	3,270	2,960	3,139	3,258	3,691
LINCOLN COUNTY											
Depoe Bay	8.0%	348	390	441	403	401	378	457	453	473	505
Lincoln City	9.5%	2,796	3,138	3,083	3,438	3,704	4,417	4,352	4,260	4,234	4,514
Newport	9.5%	1,716	1,866	2,113	2,272	2,357	2,228	2,256	2,291	2,323	2,408
Waldport	7.0%	23	22	23	23	23	23	23	23	30	34
Yachats	7.0%	394	418	442	503	520	496	477	429	451	481
Unincorporated	9.0%	874	968	1,078	1,119	1,389	1,599	1,556	1,673	1,696	1,801
MULTNOMAH COUNTY											
Fairview	6.0%	51	40	39	39	43	38	37	38	39	45	49
Gresham	6.0%	427	442	469	556	616	563	455	460	495	605	664
Portland	8.0%*	13,325	14,170	15,964	17,527	19,647	23,572	16,512	19,143	21,359	28,747	35,063
Troutdale	6.95%	290	313	356	341	375	414	403	429	428	452	481
Wood Village	6.0%	68	84	84	98	105	100	85	89	97	105	110
County-Wide	5.5%	12,352	13,467	14,794	16,726	18,491	16,115	15,441	18,208	20,052	21,464	27,435

Excerpt source: Oregon Travel Impacts 1991-2014, Dean Runyan Report, issued April 2015, prepared for Oregon Tourism Commission (See pages 214-218 for county/city details)

LEAGUE of Oregon CITIES

State Tax Stats (don't have local tax break down by accommodation type)

Lodging Statistics by Accommodation Type

Table 1.1 - Annual Lodging Tax Receipts by Accommodation Type (Dollars)

Calendar Year	Bed & Breakfast	Campgrounds & RV Sites	Hotel	Motel	Vacation Home	Lodging Intermediary	Multiple[1] & Other	Total
2005	165,577	266,056	4,722,575	3,054,408	268,347	N/A	612,573	**9,089,536**
2006	185,931	335,455	5,180,700	3,417,539	797,932	N/A	813,491	**10,731,048**
2007	206,764	349,773	5,703,323	3,671,511	904,703	N/A	870,570	**11,706,644**
2008	217,132	326,391	5,935,295	3,450,981	999,525	N/A	802,464	**11,731,788**
2009	191,207	333,024	5,262,565	3,089,753	963,954	N/A	693,885	**10,534,389**
2010	200,669	387,310	5,742,810	3,205,390	1,048,333	N/A	581,948	**11,166,460**
2011	200,859	361,438	6,237,208	3,277,140	1,131,626	N/A	607,507	**11,815,778**
2012	237,287	380,415	6,762,564	3,363,655	1,274,219	N/A	653,086	**12,671,227**
2013	252,920	432,088	7,456,848	3,584,728	1,283,448	64,592	704,972	**13,779,597**
2014	257,757	452,411	8,296,419	3,863,329	1,474,344	410,578	754,089	**15,508,927**
2015	276,343	491,958	9,403,850	4,039,527	1,669,100	1,153,382	763,642	**17,797,802**

Intermediary category is seeing largest growth.

Source: DOR Report (rev. April 2016)

https://www.oregon.gov/DOR/programs/gov-research/Documents/state-lodging-report_604-005.pdf

Tax Comparisons (property taxes and lodging taxes)

City	Revenue from Permanent Rate	Permanent Rate	Revenue from Bonds & Local Option	Revenue from Lodging Taxes
Gearhart	$474,546	$1.01	$644,529 ($1.37)	$167,000
Lincoln City	$6 million	$4.10	$1.3 million	$5 million
Ashland	$9.9 million	$4.20	$516,000	$2.1 million
Bend	$26 million	$2.80	$3.9 million	$4.7 million
Hood River	$2 million	$2.81	$527,000	$1.2 million
Eugene	$91.2 million	$7.01	$14.4 million	$4 million
Astoria	$5.5 million	$8.17	$0	$1.3 million

Revenue resources and expenses vary by community. One size doesn't fit all.

State Lodging Tax…. Basic Facts

- Lodging tax collectors must register with the Oregon Dept. of Revenue (ODOR).
- ODOR collects tax. Taxes must be paid quarterly and are due 30 days after end of quarter.
- Tax must be computed on the total full retail price.
- If you collect payment for transient lodging directly from customers, than you must collect and remit the state tax. (Includes OTCs and intermediaries)
- Lodging tax collectors are permitted to withhold 5% of the state lodging taxes collected to cover costs for record keeping, reporting and collecting the tax.

State transient lodging includes:

Note: original 2003 definition was expanded in 2005 to include more than just hotels, motels and inns.

- Hotels and motels;
- Bed and breakfast facilities;
- RV sites in RV parks or campgrounds;
- Resorts and inns;
- Lodges and guest ranches;
- Cabins;
- Condominiums;
- Short-term rental apartments and duplexes;
- Vacation rental houses;
- Tent sites and yurts in private and public campgrounds; and
- Any other dwelling unit, or portion of a dwelling unit,

used for temporary overnight stays. (< 30 days)

State lodging tax exemptions:

Facilities:

- Health care facilities, including hospitals and long care facilities
- Drug/alcohol abuse treatment facilities
- Mental health treatment facilities
- Facilities that have < 30 days of rentals in a year
- Emergency temporary shelters funded by the government
- Nonprofit youth & church camps, conference centers and other qualifying nonprofit facilities

Persons:

- Lodgers who spend > 30 days at the same facilities
- Federal employees on federal business

State Lodging Tax Revenues

- 1.8% tax

Distribution:

- At least 65% to be used to fund state tourism* programs (*marketing deleted with 2016 bill)

- 10% for matching grants, for projects that improve economic development of the visitor industry, which may include tourism-related facilities and tourism-generating events, including sporting events)

- 20% must be used to fund a regional cooperative tourism* program (marketing deleted with 2016 bill) (RCMP)

  - A regional allocation formula distributes revenues to regions, the boundaries of which are established by the Oregon Tourism Commission, in proportion to the amount of TLT revenues collected in each region. Commission has established 7 regions. (Note: Regions are different than the tax regions.)

Online Travel Companies/Intermediaries) (aka OTCs)

2012

- Online companies sue Portland (to stop collection of city tax)

2013 Legislation (HB 2656--Effective October 7, 2013)

- Bill intended to require online travel companies to pay the state and local transient lodging tax on the sale price of the rooms they sell, rather than the discounted price at which they contract for rooms.
- In addition, intermediaries required to pay tax directly rather than forwarding tax to the lodging provider. That is, "tax shall be collected by the transient lodging tax collector that receives the consideration rendered for occupancy of the transient lodging."

November 2013

- Online companies sue State of Oregon (DOR) in Oregon Tax Court over HB 2656 (legality of tax on intermediaries)

2014

AIRBNB

- Portland agreement, July 2014
- DOR payments begin, September 2014
- Washington County agreement, effective July 1, 2016

2015

Settlement in online companies' case against State of Oregon (DOR)

October 2015

- Some OTCs first start paying tax directly to DOR and some local governments after years of dispute. Some litigation/ difference in practice continues. Letter sent to may cities and counties. Back taxes paid from October 7, 2013 to present in some cases.

Intermediaries…. (Oregon law from 2013 to present)

Definitions: (Apply to State and Local TLT):

"Transient lodging intermediary" means a person other than a transient lodging provider that facilitates the retail sale of transient lodging and charges for occupancy of the transient lodging. ORS 320.300(12)

"Transient lodging provider" means a person that furnishes transient lodging. ORS 320.300(13)

"Transient lodging tax collector" means a transient lodging provider or a transient lodging intermediary. ORS 320.300(14)

State TLT:
"The tax shall be collected by the transient lodging tax collector that receives the consideration rendered for the occupancy of the transient lodging." ORS 320.305(1)(c)

"Every transient lodging tax collector is responsible for collecting the tax imposed under ORS 320.305 and shall file a return with the Department of Revenue, …." ORS 320.315(1)

Local TLT:
"The tax shall be collected by the transient lodging tax collector that receives the consideration rendered for the occupancy of the transient lodging." ORS 320.350(7)(b)

Intermediaries continued….

In 2013, the Legislative Assembly (HB 2656) clarified circumstances under which a transient lodging intermediary rather than a lodging provider would be the entity responsible for collecting and remitting transient lodging taxes. A transient lodging intermediary is defined as "a person other than a transient lodging provider that facilitates the retail sale of transient lodging and charges for occupancy of the transient lodging." Transient lodging intermediaries include online travel companies, travel agents, and tour outfitter companies, among others. The Legislature determined that the entity collecting the payment from the customer is the entity required to collect and remit the tax. Further, the law emphasized that the tax is computed on the *total retail* price paid by the final customer, regardless of whether an intermediary has first paid a lower wholesale price to the provider. These legislative changes became effective on October 7, 2013.

Source- DOR Report (rev. April 2016)

<u>Problem</u>: the legislature's intent in 2013 is still not being carried out. The legal requirements are still being debated. Most local governments have not received taxes from many intermediaries or are not receiving information requested for tax verifications.

Changes NEEDED:

- Provide funding for DOR auditing and enforcement of TLT; zip code and property detail
- Allow DOR to collect local lodging taxes if local government enters into IGA (ORS 350.620)
- Revise state/local reimbursement fees– lower or eliminate 5% deduction requirements
- Allow sharing of information between DOR and locals (need exception to ORS 320.340)
- Fix filing requirements for OTCs
- Fix recreational immunity on public lands (Johnson v. Gibson)
- Lift preemptions on local lodging tax revenue restrictions & allow local control– one size doesn't fit all

  Short of that:
  - Eliminate or revise the pre-2003 frozen percentage dedicated back to tourism
  - Eliminate or lower the 70/30% revenue split on new/increased taxes
  - Expand the definitions of "tourism promotion" and "tourism-related facility" that apply the 70/30% definitions to cover: roads, public safety, water/sewer, events & beautification that is visitor industry related (less marketing focused)
- Increase infrastructure funding for cities– revenue reform, grants (OBDD), etc.