

Excise Tax Advisory

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ETA 3211.2022

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Applicability of Leasehold Excise Tax to Occupancy and Use of Public Sidewalks by Private Businesses

Purpose This Excise Tax Advisory (“ETA”) provides information about when the occupancy and use of a public sidewalk by a private business is subject to the Leasehold Excise Tax (“LET”).

Definitions For the purposes of this ETA, the following definitions apply:

Leasehold interest means an interest in publicly-owned real or personal property via a lease, permit, license or any other written or verbal agreement between the public owner of the property and a person who would not be exempt from property taxes if that person owned the right to possess and use the property. See [RCW 82.29A.020\(1\)\(a\)](#).

Leasehold Excise Tax (LET) is a tax on the act or privilege of occupying or using public property through a leasehold interest. The tax is in lieu of the property tax. [RCW 82.29A.010](#) et seq.

Occupancy of a Public Sidewalk by a Private Business is Subject to LET When a private business occupies and uses a public sidewalk via an agreement with a public entity, the business possesses a leasehold interest in the sidewalk. LET liability arises when all of the following criteria are met:

(1) An agreement exists between the public entity and the private business providing for the usage and occupancy of the sidewalk. [RCW 82.29A.020\(1\)\(a\)](#).

x This agreement may be formal or informal, verbal or written.

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- (2) The sidewalk is publicly owned, and the public entity's ownership of the sidewalk is exempt from property tax.
- (3) The private business is granted the right to occupy and use a defined area of the sidewalk.
- The defined area may be determined by the usual practice between the parties and does not need to be specified in the agreement.
 - The business's occupation and use of the sidewalk does not need to be exclusive. Examples include:
 - A sidewalk café that is required to remove its tables when the café is closed and also allow pedestrians to walk between the outdoor seating during business hours;
 - Storing materials such as industrial trash bins, construction staging equipment, or moving pods;
 - Street festivals; and
 - Installation of awnings or scaffolding.
- (4) Occupancy and use of the sidewalk is for a continuous period of thirty days or more. [RCW 82.29A.130\(9\)](#).
- This includes successive leases or lease renewals giving substantially continuous occupancy and use of the sidewalk for thirty or more days.
- (5) Annual taxable rent for the private party to occupy and use the property is \$250 or more, as determined by fair market value. [RCW 82.29A.130\(8\)](#).

NOTE: If the business occupying and using the public sidewalk would be exempt from property tax if it instead owned the sidewalk, there is no leasehold interest and LET does not apply. For additional information on possible exemptions see [WAC 458-29A-400](#).
