



LEAGUE OF OREGON CITIES

GUIDEBOOK

Legal Guide to Collecting Transient Lodging Tax in Oregon

Updated February 2019

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Introduction

This Transient Lodging Tax Guidebook (“guidebook”) is designed to provide city leaders with background information on the state’s regulation of local transient lodging tax, an overview of how the state law works, and answers to questions regarding: (1) how the tax is collected and remitted to cities; (2) how cities can use the tax revenue; and (3) the impact of making changes to an existing tax. The guidebook also highlights emerging challenges for cities in collecting the tax—mainly, the growing prevalence of short-term rental platforms such as Airbnb and VRBO.

Finally, the guidebook provides documents intended to assist cities in implementing and amending a transient lodging tax, including a model ordinance for amending an existing tax, a model ordinance for regulating short-term rental platforms, a model collection agreement between cities and short-term rental platforms, and model forms including a registration form and a tax remittance form.

Disclaimer

This guidebook is not intended as a substitute for legal advice. Many of the legal issues highlighted herein are not settled law; a city should choose a course of action based on how much risk the city is willing to take. These discussions should be had with a trusted legal advisor.

Background

Since the 1940s, many local governments have imposed some form of a “transient lodging tax” (TLT) on occupied hotel, motel, and inn dwelling units within their jurisdiction. Often, cities and counties would reinvest these funds into their local tourism industries. Some local governments allocated these funds to general fund purposes such as fire, police, streets, and sewers that benefited both residents and tourists alike. Local TLT rates vary based on jurisdiction.

As explained below, the Oregon Legislature first began regulating TLTs in 2003, and then made changes and expansions to the original law with significant changes in 2005, 2013, 2017, and 2018.

Statewide Regulation

In 2003, the Oregon Legislature passed HB 2267, which established a 1 percent statewide TLT and created the Oregon Tourism Commission. The law required the commission to use at least 80 percent of the state-wide tax revenue to fund state tourism and marketing programs and up to 15 percent to implement regional tourism marketing programs. The state tax is administered by the Oregon Department of Revenue with proceeds directed to the semi-independent agency, Travel Oregon.

In addition, HB 2267—over the objections of local government officials from across the state—preempted local control over TLTs and restricted much of a local government’s decision-making in allocating funds from local TLTs. The bill placed restrictions on any new or increased TLT imposed by cities or counties by requiring at least 70 percent of the net revenue to go towards “tourism promotion” or “tourism-related facilities” and requiring local governments to allow lodging tax collectors to retain at least 5 percent of local TLT revenues as reimbursement for collecting the tax.

Local governments with TLTs already in place were “grandfathered” under HB 2267. Local governments with pre-existing TLTs must maintain the distribution ratios they had in place on July 1, 2003, but cannot decrease the percentage of total tax revenue actually expended to fund tourism promotion or tourism-related facilities. For example, if a local government had a 5 percent tax in place on July 1, 2003, with 50 percent of the revenue going to tourism promotion and 50 percent going toward the general fund, the local government must not decrease the portion of the tax revenue going toward tourism promotion and tourism-related facilities below the established 50 percent.

Changes in 2005

In 2005, the Oregon Legislature amended state law to include more than just hotels, motels, inns, and camping spots, but also houses, cabins, condominiums, apartment units, or other dwelling units, or portions of any of these dwelling units that are used for temporary human occupancy.

Most Recent Changes and Challenges

In 2013, the Oregon Legislature passed HB 2656 to address the growing number of online travel companies facilitating transient lodging. The amendments intended to require online travel companies to assess the state and local tax on the sale price of the rooms as paid by the lodger, rather than the discounted price the online travel company originally pays for the room. For example, an online travel company may purchase a block of rooms for \$100 each and then sell rooms to lodgers for \$150, retaining the extra \$50 as their “fee” for facilitating the sale. In November 2013, online travel companies sued the Oregon Department of Revenue, challenging the state and local government’s ability to tax their “fee” for facilitating the sale. The parties later settled without fully resolving this issue.

The 2013 amendments also added transient lodging intermediary to the definition of transient lodging tax collector, intending to hold them responsible for the tax. The change was in response to the growing prevalence of residents engaging in short-term rentals—*i.e.*, individuals or “hosts” who list their homes, or a room in their homes, on a website such as Airbnb or HomeAway and allow “guests” to stay with them and charge rent. The problem is that hosts are often not individuals in the tourism industry, may not be aware of the tax, and their rental may not be allowed by local regulations. For all these reasons, it is difficult to collect the TLT from hosts. Instead of attempting to track down every host within the jurisdiction, the state and many cities—including Portland, San Francisco, and New York City—have instead attempted to impose regulations and requirements on the hosting platforms. This new type of regulation has led to a series of court cases across the country—some of which have been resolved, either through court decision or new legislation.

In 2017, the Legislature passed a bill that gave the Oregon Department of Revenue authority to collect local TLTs on behalf of cities and counties. Note that as of February, 2019, DOR has not begun implementing that program.

Finally, in 2018, the Legislature amended the definition of “transient lodging intermediary” to include online hosting platforms like Airbnb, VRBO, and HomeAway.

Key Definitions

Below are definitions for several relevant terms commonly used when discussing TLTs in Oregon. These definitions are found in ORS 320.300.

Transient lodging tax “means a tax imposed by a unit of local government on the sale, service or furnishing of transient lodging.” ORS 320.300(4).

Transient lodging “means (a) Hotel, motel and inn dwelling units that are used for temporary overnight human occupancy; (b) Spaces used for parking recreational vehicles or erecting tents during periods of human occupancy; or (c) Houses, cabins, condominiums, apartment units, or other dwelling units, or portions of any dwelling units, that are used for temporary human occupancy.” ORS 320.300(11). Note that transient lodging includes both traditional lodging businesses like hotels and motels as well as individuals who rent out all or a portion of their home.

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

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) (added in 2013). Under HB 4120 (2018), all online platforms that facilitate short-term rentals (*i.e.*, Airbnb, VRBO, etc.), are considered “transient lodging intermediaries” and are thus required to collect TLTs.

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

Collection reimbursement charge “means the amount a transient lodging tax collector may retain as reimbursement for the costs incurred by the transient lodging tax collector in collecting and reporting a transient lodging tax and in maintaining transient lodging tax records.” ORS 320.300(1).

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.” ORS 320.300(9).

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.” ORS 320.300(7).

How the Law Works

Local governments can impose a tax on transient lodging at any rate.¹ People paying for transient lodging—*i.e.*, tourists or others who rent out the transient lodging—are responsible for paying the tax. Transient lodging tax collectors are responsible for collecting the tax from the tourist and remitting it to the local government. The 2013 amendment to state law clarified that the transient lodging taxes are on the total retail price the occupant pays.

Remittance and Reimbursement

TLT collectors are required to keep sufficient records regarding the tax and to remit the tax to the local government on a schedule determined by the local government.² To offset the administrative burden, TLT collectors can retain a reimbursement.

The amount a local government must allow TLT collectors to retain as a reimbursement varies depending on when the local government first imposed the TLT and if the local government has increased the tax:

Grandfathered Tax: Local governments that imposed a TLT before January 1, 2001, may maintain whatever reimbursement rate they allowed before January 1, 2001, but cannot decrease it. For example, if the collector could retain 4 percent to offset its administrative burden, the city does not have to change the rate, but it cannot decrease it. If the local government had a TLT and had no reimbursement before January 1, 2001, the local government need not provide one.

New Tax: Local governments that impose a new TLT on or after January 1, 2001, must allow collectors to retain a minimum of 5 percent of all collected tax revenues as reimbursement for the costs of collecting the tax.

Increased Tax: Local governments that increase a TLT on or after January 1, 2001, must allow a collector to retain a minimum of 5 percent of *all collected tax revenues*, including revenues that would have been collected without the increase, as reimbursement for the costs of collecting the tax. Said differently, if the local government increases an existing tax, the 5 percent reimbursement minimum applies to the *entire* tax collected, not simply the difference between the former tax rate and the new tax rate. In addition, a local government cannot take certain actions to offset the increased reimbursement rate.³

¹ The Oregon Travel Impacts report, prepared annually for the Oregon Tourism Commission by Dean Runyan Associates, collects TLT rate and annual revenue information on all cities and counties. See <http://industry.traveloregon.com/content/uploads/2018/05/Dean-Runyan-FINAL-2018.pdf>.

² There are alternative remittance methods for camping and recreational vehicle spaces. See ORS 320.347.

³ A unit of local government may not offset the loss of local transient lodging tax revenues caused by collection reimbursement charges allowed under this section by: (a) Increasing the rate of the local transient lodging tax; (b)

In 2017, the Legislature amended ORS 305.620 to allow the Oregon Department of Revenue (DOR) to collect local TLTs on behalf of cities. Under that amendment, the DOR is permitted to collect local TLTs if a city and the DOR enter into an intergovernmental agreement and the DOR recoups their administrative costs. For such a collection effort to occur, a city's collection and accounting practices must be coordinated with collection and accounting procedures used by the DOR. The League anticipates that the intergovernmental agreement for TLT collection will closely resemble the model intergovernmental agreement used by the DOR to collect local marijuana taxes. Before the DOR can enter into agreements and begin collection for local governments, the DOR must alter their own state collection processes and tax forms (currently segregated by 10 regions across the state, rather than by city and county). In addition, their computer system will need to be revised to distribute the taxes appropriately to the correct local government taxing districts. The up-front costs are estimated at \$900,000. The League is working with the DOR and the Legislature on a payment method and anticipates a bill in the 2019 legislative session to help resolve that issue.

The Legislature also amended ORS 320.332 in 2017, which authorizes cities and the DOR to share confidential TLT information with one another to improve the abilities of state and local governments in collecting TLTs. The DOR has not begun sharing information but is expected to adopt rules in consultation with local governments soon that establish the process for making requests and provide forms for records requests. *See* ORS 320.332(7).

How Cities Can Use TLT Revenue

Although state law does not restrict the tax rate a local government may impose on transient lodging, it does restrict how the revenue from newly imposed or newly increased TLTs can be used. As a basic mandate, a local government that did not have a TLT in place or approved on July 1, 2003, may not impose one, unless the local government ensures that at least 70 percent of the TLT revenue will be used for tourism promotion, tourism-related facilities, or to finance or refinance debt for tourism-related facilities. The local government is at liberty to allocate up to 30 percent for general city or county services (hereinafter "the 70/30 distribution").

Grandfathered Taxes

If a local government already had a TLT in place or approved on or before July 1, 2003, the local government's use of the tax revenue is grandfathered, with the following caveat: the local government may not decrease the percentage of total TLT revenues that were expended or agreed to be expended to fund tourism promotion or tourism-related facilities.⁴ For example, if a

Decreasing the percentage of total local transient lodging tax revenues used to fund tourism promotion or tourism-related facilities; or (c) Increasing or imposing a new fee solely on transient lodging tax collectors or tourism promotion agencies that are funded by the local transient lodging tax. ORS 320.345(4).

⁴ The actual recipients of the tax may change, but the total percentage going toward tourism promotion or tourism-related facilities may not.

local government imposed a 5 percent TLT in 1990 and allocated 20 percent of the funds to tourism promotion and 80 percent to the general fund, the local government may continue to do so. The local government may even increase the total percent of the revenue allocated for tourism promotion or tourism-related facilities, but it may not decrease it below 20 percent. See below for restrictions that apply to increased taxes.

New TLTs

Under HB 2267 (2003), codified in ORS 320.350, local governments that impose a new TLT after July 1, 2003, may only expend TLT revenue in three ways:

- (1) For “tourism promotion” or “tourism-related facilities” as those terms are defined in ORS 320.300;
- (2) For city and county services; or
- (3) To finance or re-finance the debt on tourism-related facilities and pay associated administrative costs, with some restrictions.

In addition, if the local government imposes a new tax, it must comply with the 70/30 distribution and the 5 percent collector reimbursement deduction.

Increasing a Grandfathered Tax

If the local government has a grandfathered TLT, it may increase the tax rate. However, doing so will trigger the 70/30 distribution. Although not completely free from doubt (see Appendix A), most local governments interpret the 70/30 distribution to only apply to the revenue from the *increased portion* of the TLT, *not the total revenue* generated from the entire TLT.

For example, if the local government had a 5 percent grandfathered tax with 20 percent going to tourism promotion and 80 percent going to the general fund, it could continue to apply the 20/80 distribution. If, however, the local government increased the tax to 8 percent, the 20/80 distribution would apply to revenue generated from the grandfathered 5 percent rate, and the 70/30 distribution would apply to revenue generated from the additional 3 percent rate. In addition, an increase will trigger a 5 percent collector reimbursement requirement under ORS 320.345(3).

What are “Tourism-Related Facilities”?

By definition, tourism-related facilities are conference centers, convention centers, visitor information centers, or 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. ORS

320.300(9). The law also provides definitions for conference centers⁵ and convention centers.⁶ Unfortunately, the law does not provide any additional guidance on what constitutes “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 local governments—especially those that tend to accommodate more tourists than residents—question whether infrastructure such as sewers or roads qualify as “tourism-related facilities.” That is an open legal question. Local governments seeking to use TLT revenue on public facilities used both by residents and tourists are encouraged to contact legal counsel for further guidance.⁷

Other Amendments to a Grandfathered Transient Lodging Tax Ordinance

Local governments with grandfathered TLTs may be interested in updating their codes to address the challenges in collecting from the online short-term rental marketplace but are hesitant to do so out of concern that amending their tax ordinance to capture short-term rentals will jeopardize their grandfathered status. Although not free from doubt, for most cities, amending an existing code to collect from the short-term rental marketplace will likely not impact the status of a grandfathered tax. However, cities seeking to make this change, or similar changes, should consult with their city attorneys.

Grandfathered status may be lost if the city imposes a “new” tax. Generally, a city imposes a “new” tax when it creates an obligation to pay the charge. Most cities will likely be able to maintain their grandfathered status because their current code language already *imposes* a tax on the occupants of short-term rentals (*i.e.*, the city already created the obligation to pay) and the code amendments pertain only to how the city will *collect* that tax.⁸

⁵ “Conference center” means a facility that: (a) Is owned or partially owned by a unit of local government, a governmental agency or a nonprofit organization; and (b) Meets the current membership criteria of the International Association of Conference Centers. ORS 320.300(2).

⁶ “Convention center” means a new or improved facility that: (a) Is capable of attracting and accommodating conventions and trade shows from international, national and regional markets requiring exhibition space, ballroom space, meeting rooms and any other associated space, including without limitation banquet facilities, loading areas and lobby and registration areas; (b) Has a total meeting room and ballroom space between one-third and one-half of the total size of the center’s exhibition space; (c) Generates a majority of its business income from tourists; (d) Has a room-block relationship with the local lodging industry; and (e) Is owned by a unit of local government, a governmental agency or a nonprofit organization. ORS 320.300(3).

⁷ Todd Davidson requested an Attorney General opinion on this issue in 2008. See Opinion Request OP-2008-32008 WL 5246389 (Or. A.G. Nov. 14, 2008). Attorney General opinions are advisory only and therefore do not have the force of law.

⁸ A government imposes a tax when it creates a legal obligation to pay the charge. See *Roseburg School Dist. v. City of Roseburg*, 316 Or 374, 379 (1993). A local government may amend a tax code without “imposing” a new tax if the amendments do not pertain to “those portions of a local government enactment that relate to the imposition of a charge.” *Homebuilders Ass’n of Metropolitan Portland v. Metro*, 250 Or App 437, 445 (2012) (discussing the text of a statute that prohibits a local government from imposing a new tax on construction). Similarly, a local government

To discern whether the city has already imposed a tax on short-term rentals, the city should review their definition of “transient lodging.” If the definition includes broad language that covers renting out all or a portion of one’s home, the city could likely collect from occupants of short-term rentals without “imposing” a new tax.

New Challenges: Short-Term Rental Platforms such as Airbnb, VRBO, and Others

Hosting platforms (usually internet sites) that act as facilitators to connect “hosts” and “guests” pose a challenge for local governments attempting to collect a TLT from a “host” that either is not aware of the tax or is seeking to avoid tax and regulation. As background, most cities that have a TLT also have a registration requirement—anyone furnishing transient lodging must register and thereafter comply with the tax and other local regulations.

Challenges

Hosts may be unaware of the regulation. Individuals renting out all or part of their homes may not be aware of a local tax and registration requirement. Further, such individuals may not want to register because doing so puts them in the regulatory spotlight as many local governments in Oregon are specifically regulating the short-term rental market to ensure the safety of both hosts and guests.⁹ As an additional challenge, many hosts do not collect payment directly from guests. The guests often pay via an online platform—such as Airbnb or VRBO—which then transfers the payment to the hosts.

Hosting platforms are not incentivized to assist local governments. Hosting platforms such as Airbnb and VRBO historically have been resistant to complying with local governments in collecting TLTs or enforcing local regulations. Many hosting platforms do not want to divulge the list of properties advertising on their website because they are likely aware of some properties that are not in compliance with local regulations, and as such, divulging property locations could limit their client list.

In addition, the hosting platforms do not wish to assume liability for acts of the hosts—meaning the online platform would be fined or penalized when a local host does not pay the tax or comply with local regulations.

Legal Challenges. In 2013 the Legislature passed HB 2656 and added the term “transient lodging intermediary” to ORS 320.300. The bill was intended to require intermediaries to pay taxes directly rather than forwarding taxes to the transient lodging provider. That is, the “tax

may amend “other elements of an ordinance that may in some way relate to the administration of a tax but do not directly bear on its imposition.” *Id.*

⁹ These regulations are outside the scope of this guidebook. However, sample regulations include working smoke detectors and bedrooms with legal egress.

shall be collected by the transient lodging tax collector that receives the consideration rendered for occupancy of the transient lodging.”¹⁰ However, some online travel companies and hosting platforms argued that they were not transient lodging intermediaries under the state law (and local ordinances that track state law) because they did not “charge for occupancy.” Instead, they argued, they only facilitated the transaction between the host and the occupant. ORS 320.300(12). Likewise, those companies argued that they were not required under state law to collect and remit TLTs because they did not “receive the rent.” ORS 320.350(7)(b). HB 4120 (2018), however, clarifies that hosting platforms are indeed transient lodging intermediaries and therefore are required to collect TLTs from hosts. HB 4120 became effective on July 1, 2018.

Internet hosting platforms have also challenged local governments’ ability to regulate them under the federal Communications Decency Act of 1996 (“CDA”) and the federal Stored Communications Act (“SCA”). Under the CDA, no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider. The CDA also includes an express preemption clause, mandating “[n]o cause of action may be brought and no liability may be imposed under any state or local law that is inconsistent with this section.” 47 U.S.C. § 230(e)(3). The SCA restricts government access to stored electronic communications by limiting the government’s ability to compel internet service providers to disclose information in their possession about their customers or subscribers. 18 U.S.C. §§ 2701—2712.

In layman’s terms, under the CDA, an online platform such as Airbnb cannot be held responsible for monitoring the content of its internet site, and local governments cannot pass regulations to make them responsible. Therefore, a local government cannot force an online platform to ensure that every property on their website is registered with the city and complying with the tax as a condition of advertising on the internet platform. Doing so would require the online platform to monitor the content.

Recently, the California Court of Appeal upheld an administrative subpoena issued by the city of San Francisco to HomeAway. The subpoena sought information relating to hosts who had used HomeAway to offer accommodations in the city, as well as data identifying rental transactions between hosts and occupants that used the HomeAway platform. HomeAway argued that the city’s subpoena violated the SCA and HomeAway’s constitutional rights. The California Court of Appeal disagreed, explaining that Section 2703(c)(2) authorizes the government to issue an administrative subpoena to obtain a limited set of records from an internet service provider, such as the identity of a subscriber and the services the subscriber has utilized. Although the California decision is not precedential in Oregon, it offers a good analysis for local governments who are faced with arguments that their ordinances or administrative enforcement of TLTs violates federal law.¹¹

¹⁰ See ORS 320.305(1)(c) and ORS 320.350(7)(b).

¹¹ Cities wishing to issue an administrative subpoena for records must first pass an ordinance granting subpoena authority to the city council and/or select staff members. LOC’s model subpoena ordinance is available at: <https://www.orcities.org/application/files/1115/7904/4210/ModelSubpoenaOrdinance3-10-19.pdf>.

Potential Solutions

Under HB 4120 (2018), online transient lodging platforms are considered “transient lodging intermediaries” under ORS 320.300, unless otherwise provided by city or county ordinance, resolution, or agreement. Cities wishing to require hosting platforms and online travel companies to collect and remit the local TLT should ensure that local ordinances and agreements utilize the definition of “transient lodging intermediary” found in Section 1 of HB 4120 (amending ORS 320.300).

Model Ordinance – Appendix B

The model ordinance attached to this guidebook regulates two different actions hosting platforms may undertake:

- (1) Accepting a registration fee from hosts: Hosting platforms may only accept registration fees from hosts if the host produces a certificate indicating it has registered with the city.
- (2) Facilitating the payment of rent: Any hosting platform that collects rent from the occupant—even if they are not the final recipient of the funds—is also then responsible for collecting and remitting the TLT.

Model Collection Agreement – Appendix D

The second approach is to have an ordinance that does not address short-term rentals and instead separately negotiate an agreement with desired hosting platforms for tax collection. Quite a few local governments in Oregon have taken this approach, as it avoids the possibility of litigation.

This approach has its difficulties, including requiring separate agreements with each internet platform (VRBO, Airbnb, HomeAway, etc.) and ensuring that if a new internet platform enters the market, the city contacts and negotiates an agreement with them as well. Following the passage of HB 4120 (2018), local governments should no longer need to enter into voluntary tax collection agreements with online short-term rental platforms, because HB 4120 clarified that such companies are “transient lodging intermediaries” and thus required to collect and pay TLTs.

The collection agreements that online platforms have agreed to with local jurisdictions in Oregon have been problematic because they do not require the online platform to divulge the name or location of hosts. This makes it difficult for local governments to locate hosts to ensure the transient lodging facilities comply with the local health and safety codes, along with land use codes. The new law requires them to collect taxes, file a tax return, and pay taxes.

Ordinance and a Collection Agreement

A final option would be to draft an ordinance (or amend an existing code) to address short-term rental internet platforms *and* negotiate an agreement with the platforms for tax

collection. Using this option, a city could use the ordinance as a backstop to impose regulations on those platforms that it does not have an agreement with, but permit platforms with whom the city has an agreement to be bound by the agreement instead. Again, voluntary collection agreements are no longer necessary, because HB 4120 clarified that internet short-term rental platforms are transient lodging intermediaries and are required to collect TLTs.

The difficulties with this approach are similar to those that exist with simply having collection agreements—*i.e.*, separate agreements create different standards and the lack of information regarding the name or location of hosts.

Which option may best serve the needs of a particular city is likely dependent upon the unique circumstances of each community. To that end, cities are once again encouraged to consult with trusted legal counsel about how best to proceed.

Conclusion

The landscape of the local TLT is evolving and will continue to do so as technology and possibly even state law continues to change. The League of Oregon Cities will update this guide to address such changes as they come about, but cities should remain aware of this changing landscape and adapt their local TLT programs to address their individual local needs.

Appendix A

Legal Note – Increasing a Grandfathered Tax

The Oregon Legislature drafted the 70/30 distribution in ORS 320.350(6) to apply to “net revenue from a new or increased tax.” Whether the 70/30 distribution applies to all the revenue generated from an increased tax or is limited to the revenue generated from the increased portion of the tax is a matter of statutory interpretation. Although no court has examined the matter, a close reading of the statute and legislative history reveal the drafters intended the 70/30 distribution to apply only to the increased portion of tax.

Because this matter hinges on the proper understanding of ORS 320.350, one should employ the three-part hierarchical inquiry for statutory construction. *PGE v. Bureau of Labor and Industries*, 317 Or 606 (1993), modified by *State v. Gaines*, 346 Or 160, 171-72 (2009). The first step is to analyze the text and context of the statute. *Id.* The second level examines legislative history. *Id.* Finally, if the legislative intent is still inconclusive, the analysis shifts to non-textual maxims of statutory construction. *Id.*

a. The Text is Ambiguous.

Although the actual text of the statute is the best evidence of legislative intent, the statutory text at issue here could plausibly mean either that the 70/30 distribution applies to: (1) the revenue generated from the entire tax, as increased, or (2) the revenue generated from the increased portion of the tax. As such, one must proceed to examine the statute’s context.

b. Courts should infer from the statutory context that the Legislature intended the 70/30 distribution to apply only to revenue generated from the increased portion of the tax.

In examining the context of the statute, the Legislature intended the 70/30 distribution to apply only to the revenue from the increased portion of the tax. This intent is best displayed by comparing the text in ORS 320.350(6) to a similar provision in a related statute drafted at the same time, ORS 320.345(3). In ORS 320.345(3), the drafters provided that when a local government increases an existing transient lodging tax, such an increase triggers a change in the reimbursement percentage for collectors to “at least five percent of all collected local transient lodging tax revenues, *including revenues that would have been collected without the increase.*” (Emphasis added). In other words, for the reimbursement change the Legislature explained that the new requirement applied to *the entire tax, as increased*, and not simply *the increased portion of the tax*.

When construing a statute, courts consider “the context of the statutory provision at issue, which includes other provisions of the same statute and other related statutes,” and statutory provisions drafted contemporaneously. *PGE*, 317 Or at 611, *see also State v. Stamper*, 197 Or App 413, 417-18 (2005). Moreover, courts presume that the Legislature’s use of a provision in one law and the omission of the provision in a related law means that they intended to omit the concept in the related law. *Stamper*, 197 Or App at 418-19. The Legislature chose not to

include language similar to that included in ORS 320.345(3) language when drafting the 70/30 distribution requirement. As a result, the court must infer the Legislature intended the 70/30 distribution in ORS 320.350 to apply only to the increased portion of the tax.

c. The legislative history confirms the 70/30 distribution only applies to revenue from the increased portion of the tax.

The statute’s legislative history confirms the contextual interpretation. In general, “an examination of legislative history is most useful when it is able to uncover the manifest general . . . intent behind an enactment.” *Gaines*, 346 Or at 172-3. In testimony and documents presented during the drafting of HB 2677, proponents and opponents alike demonstrated an understanding that the 70/30 distribution only applied to a newly imposed tax or “new revenue” from an increased tax.

Testimony during the committee debates revealed a common understanding regarding the meaning of the term “increased tax.” As Ken Strobeck from the League of Oregon Cities explained at a hearing in front of the House Revenue Committee, in all versions of the bill there is “an agreement of ‘maintenance of effort’ clause,” meaning that local governments will be free to “freeze” or maintain what they are currently doing, and the new requirement would only apply to any newly generated, or “additional,” tax. Testimony of Ken Strobeck, League of Oregon Cities, House Revenue Committee (HB 2267) July 23, 2003, Tape 224, side A. This testimony was not challenged.

Other documentation presented during the hearings echoed Strobeck’s understanding. For example, Scott West, one of the bill’s chief architects, presented an exhibit titled “Summary of HB 2267-9 Proposed Amendments” dated June 25, 2003. The exhibit summarizes the progression of the amendments for the portion of the statute related to increased TLTs: the “[o]riginal bill mandated that *revenues raised from additive increase* to the local tax rate after the implementation date were exclusively (100 percent) dedicated to tourism promotion or tourism-related facilities. Amendments mandate that a minimum of 70 percent of *new revenues* would be dedicated to tourism promotion or tourism related facilities.” (Emphasis added).¹² When increasing a tax, the “new revenue” is the revenue produced from the increase, not the revenue produced from the pre-existing tax. By using this language, West demonstrates he intended the 70/30 distribution to apply only to the increased portion of the tax.

By using terms “maintenance of effort” and “new revenue” to describe their intention in how local governments may use tax dollars in the future, the drafters acknowledged that the

¹² West makes a similar statement in his memorandum to the House Revenue Committee on April 17, 2003 titled “Support for HB 2267: the Oregon Tourism Investment Proposal.” He stated that HB 2267 does “three important things,” one of which is to “protect local resources,” that to “fund local tourism project, a local room tax may be increased, or instituted, if . . . 100% of the new tax revenue is for tourism promotion and/or tourism facilities purposes.”

distribution only applies to new funds; local governments are able to maintain their current course for all funds generated by the pre-existing tax.

Although this conclusion is not free from doubt as it has not been clarified by the Legislature nor interpreted by a court, using Oregon's statutory interpretation methodology, the text, context and legislative history for ORS 320.350(6) reveals that the drafters intended the 70/30 distribution to apply to the increased portion of a pre-existing tax.

Appendix B Model TLT Ordinance

AN ORDINANCE OF THE CITY OF [NAME] IMPLEMENTING A [INSERT PERCENT] TRANSIENT LODGING TAX

WHEREAS, a local transient lodging tax is a tax imposed by a local government on the sale, service or furnishing of transient lodging;

WHEREAS, transient lodging includes hotel, motel and inn dwelling units that are used for temporary overnight human occupancy; spaces used for parking recreational vehicles or erecting tents during periods of human occupancy; or houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units, that are used for temporary human occupancy;

WHEREAS, ORS 320.350 provides that a city council may impose a new local transient lodging tax if at least seventy percent (70%) of the net revenue shall be used to fund tourism promotion or tourism-related facilities or certain debt-related expenses and no more than thirty percent (30%) of net revenue may be used for city services; and

WHEREAS, the city wishes to require any person other than a transient lodging provider that facilitates the retail sale of transient lodging and: charges for occupancy of the transient lodging; collects the consideration charged for occupancy of the transient lodging; or receives a fee or commission and requires the transient lodging provider to use a specified third-party entity to collect the consideration charged for occupancy of the transient lodging and remitting the tax to the city; and

WHEREAS, the city council wants to impose a [insert percent] transient lodging tax.

NOW THEREFORE, BASED ON THE FOREGOING, THE CITY OF [NAME] ORDAINS AS FOLLOWS:

Chapter [insert chapter number] is hereby added to the [insert name of city] municipal code as follows:

Section 1: DEFINITIONS

The following definitions apply in this chapter.

A. **Transient Lodging Provider** means a person that furnishes transient lodging.

B. **Transient Lodging Intermediary** means a person other than a transient lodging provider that facilitates the retail sale of transient lodging and:

- a. Charges for occupancy of the transient lodging;
- b. Collects the consideration charged for occupancy of the transient lodging; or

- c. Receives a fee or commission and requires the transient lodging provider to use a specified third-party entity to collect the consideration charged for occupancy of the transient lodging.

C. **Transient Lodging Tax Collector** means a transient lodging provider or transient lodging intermediary.

D. **Occupancy** means the right to the use or possession of any space in transient lodging for dwelling, lodging or sleeping purposes for less than 30 days.

E. **Occupant** means any individual who exercises occupancy or is entitled to occupancy in transient lodging for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days.

F. **Person** means any individual, firm, partnership, joint venture, limited liability company, corporation, limited liability partnership, association, host, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

G. **Rent** means the consideration paid or payable by an occupant for the occupancy of space in transient lodging valued in money, goods, labor, credits, property, or other consideration. If a separate fee is charged for services, goods or commodities and the fee is optional, that fee is not included in rent.

H. **Short-Term Rental** means a house, duplex, multi-plex, apartment, condominium, houseboat, trailer or other residential dwelling unit where a person rents a guest bedroom or the entire residential dwelling unit for transient lodging occupancy. Generally, a short-term rental is zoned residential or has a building occupancy that only allows for residential use.

I. **Short-Term Rental Hosting Platform** means a business or other person that facilitates the retail sale of transient lodging by connecting occupants with transient lodging providers, either online or in any other manner. Short-term rental hosting platforms are transient lodging intermediaries.

J. **Tax Administrator** means the [Finance Director or other position] of the City of [insert].

K. **Transient Lodging or Transient Lodging Facilities** means:

- (1) Hotel, motel, and inn dwelling units that are used for temporary overnight human occupancy;
- (2) Spaces used for overnight parking of recreational vehicles or placement of tents during periods of human occupancy; or

- (3) Houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units that are used for temporary human occupancy.

L. **TLT** or **tax** means the transient lodging tax.

Section 2: TAX IMPOSED

A. Effective [DATE], each occupant shall pay a TLT in the amount of [TAX RATE] percent of the rent. The occupant shall pay the TLT with the rent to the transient lodging tax collector. TLT amounts shall be rounded down to the nearest cent. The transient lodging tax collector shall maintain records of all rent charged and TLT payments received. If rent is paid in installments, a proportionate share of the TLT shall be paid by the occupant to the transient lodging tax collector with each installment unless the occupant pays the entire amount with the first payment.

B. Bills, receipts or invoices provided to occupants shall list the TLT separately and must accurately state the amount of tax. All amounts listed as TLT on invoices, bills or receipts must be reported as TLT and, after collection, must be turned over to the city, less the [PERCENT¹³] percent administrative charge.

Section 3: COLLECTION OF TAX BY TRANSIENT LODGING TAX COLLECTOR

A. Every transient lodging tax collector shall collect the TLT at the time rent is paid, unless an exemption applies. If payment is by credit card, for purposes of this section, payment is made at the time credit card information is provided to the transient lodging tax collector, not when the transient lodging tax collector ultimately receives credit for the transaction. While holding the payment in trust for the city, a transient lodging tax collector may commingle the tax proceeds with the transient lodging tax collector's funds, but the transient lodging tax collector is not the owner of tax proceeds, except that, when a return is filed, the transient lodging tax collector becomes the owner of the administrative fee authorized to be retained. Transient lodging tax collectors may choose to file returns and remit payment based on amounts accrued but not yet collected. The transient lodging tax collector is liable for any TLT that should have been collected from the occupant, except in cases of nonpayment of rent by the occupant.

B. Upon request of the city, transient lodging tax collectors must provide all physical addresses of transient lodging facilities within the city limits and the related contact information, including the name and mailing address, of the general manager, agent, owner, host or other responsible person for the location.

¹³ For new or increased TLTs, the administration fee cannot be less than 5%. *See* ORS 320.345.

Section 4: SHORT-TERM RENTAL HOSTING PLATFORM FEES

A hosting platform for short-term rentals may collect a fee for booking services in connection with short-term rentals only when those short-term rentals are lawfully registered as operators with the city and possess a certificate of authority at the time the short-term rental is occupied.

Section 5: LIABILITY FOR TAX

Transient lodging providers who receive any portion of the rent for transient lodging and transient lodging intermediaries that provide booking service are both transient lodging tax collectors and are jointly and severally liable for the tax.

Section 6: EXEMPTIONS¹⁴

No TLT shall be imposed upon:

- A. A dwelling unit in a hospital, health care facility, long-term care facility or any other residential facility that is licensed, registered or certified by the Oregon Department of Human Services or the Oregon Health Authority;
- B. A dwelling unit in a facility providing treatment for drug or alcohol abuse or providing mental health treatment;
- C. A dwelling unit that is used by members of the general public for temporary human occupancy for fewer than 30 days per year;
- D. A dwelling unit, the consideration for which is funded through a contract with a government agency and the purpose of which is to provide emergency or temporary shelter;
- E. A dwelling unit at a nonprofit youth or church camp, nonprofit conference center or other nonprofit facility; or
- F. A dwelling unit that is leased or otherwise occupied by the same person for a consecutive period of 30 days or more during the year. The requirements of this subsection are satisfied even if the physical dwelling unit changes during the consecutive period, if:
 - (1) All dwelling units occupied are within the same facility; and
 - (2) The person paying consideration for the transient lodging is the same person throughout the consecutive period.

¹⁴ Under state law, exemptions are only applicable to the state tax, but most local jurisdictions choose to apply the exemptions to the local tax as well.

Section 7: REGISTRATION OF TRANSIENT LODGING PROVIDER – FORM AND CONTENTS – EXECUTION – CERTIFICATION OF AUTHORITY

A. Every person engaging or about to engage in business as a transient lodging provider shall provide a completed registration form to the tax administrator within 15 calendar days after commencing business. The registration form shall require the transient lodging provider to provide the name of the business, any separate business addresses, and other information as the tax administrator may require to implement this Chapter. Transient lodging providers who own or operate transient lodging facilities in [CITY] shall provide the address of the lodging facility. The registration form shall be signed by the transient lodging provider. The tax administrator shall, within 15 days after registration, issue without charge a certificate of authority to collect the TLT. The transient lodging provider’s obligation to collect the TLT is imposed once rent for transient lodging is paid, even if the registration form has not been filed or if the certificate has not been issued. If the rent transaction is facilitated online, the certificate of authority must be able to be viewed by the occupant by clicking on a link to the certificate of authority at a reasonable place during the payment transaction.

B. Certificates shall be non-assignable and non-transferable and shall be surrendered to the tax administrator when the business is sold or transferred or when a transient lodging facility ceases to operate at the location specified in the registration form. Each certificate issued to a transient lodging provider for a specific lodging facility shall be prominently displayed at the lodging facility and include:

- (1) The name of the transient lodging provider;
- (2) The address of the transient lodging facility;
- (3) The date the certificate was issued; and
- (4) The certificate number as assigned by the tax administrator.¹⁵

Section 8: REMITTANCES AND RETURNS

A. Transient lodging tax collectors must submit a completed tax return form to the tax administrator on or before the last day of the month following the end of each calendar quarter, reporting the amount of tax due during the quarter and accompanied by remittance of all tax collected, less a [five percent] administration fee.¹⁶

¹⁵ A certificate of authority should look something like a building permit or any city-issued permit.

¹⁶ Under ORS 320.345, 5 percent is the minimum reimbursement for new or increased TLTs. Cities can choose to increase this percentage, but not decrease it.

Cities can alter the tax due date. This schedule aligns with the state TLT under ORS 320.315.

In addition, ORS 320.347 makes an exception for camping and recreational vehicle spaces:

B. The transient lodging tax collector is entitled to the administration fee. If a transient lodging facility has multiple owners, they are not entitled to retain additional fees.

C. Remittances are delinquent if not made by the last day of the month in which they are due.

D. Returns shall show the gross rents collected, taxable rents, the total amount of TLT collected and the amount of the administrative fee retained by the transient lodging tax collector. Returns shall also show the exempt and excluded rents and the basis for exemptions and exclusions.

E. Tax returns and remittances may be submitted in person or by mail. If the return and remittance is mailed, the postmark shall be considered the date of delivery.

F. The tax administrator may extend the time for making any return or remittance of the tax by up to 30 days. No further extension shall be granted, except by the city council. Any transient lodging tax collector to whom an extension is granted shall pay interest at the rate of [PERCENT] per month on the amount of the remittance due without proration for a fraction of a month. If a return is not filed, and the remittance and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties.

Section 9: PENALTIES AND INTEREST

- A. Interest shall be added to the overall tax amount due at the same rate established under ORS 305.220 for each month, or fraction of a month, from the time the return to the tax administrator was originally required to be filed to the time of payment.
- B. If a transient lodging tax collector fails to file a return or pay the tax as required, a penalty shall be imposed in the same manner and amount provided under ORS 314.400.
- C. Every penalty imposed, and any interest that accrues, becomes a part of the financial obligation required to be paid and remitted to the tax administrator.
- D. Taxes, interest, and penalties paid to the tax administrator under this section shall be distributed to the city's {Name of Designated Fund}.

“(1) Except as provided in this section, a unit of local government that imposes a tax on the rental of privately owned camping or recreational vehicle spaces shall, regardless of a schedule imposed by the unit of local government for remitting tax receipts, allow a transient lodging tax collector to hold the tax collected until the amount of money held equals or exceeds \$100.

(2) Once the amount held by a transient lodging tax collector equals or exceeds \$100, or by December 31 of each year if the \$100 threshold is not met, the transient lodging tax collector shall remit the tax collected at the next following reporting period established by the unit of local government for payment of the tax.

(3) A unit of local government may not assess any penalty or interest against a transient lodging tax collector that withholds payments pursuant to this section.”

Section 10: DEFICIENCY DETERMINATION – FRAUD, EVASION, LOCAL TAX TRUSTEE DELAY

A. Deficiency Determination. The tax administrator may review tax returns and adjust the amount due based on the information in the return, on information obtained during a review or audit of records, or on the basis of other evidence. In the event of a deficiency, the tax administrator shall provide notice of the deficiency to the transient lodging tax collector, who shall remit deficiencies within 10 business days of the deficiency notice. Notice may be by personal delivery or certified or registered mail.

- (1) In reviewing and adjusting tax returns, the tax administrator shall offset any amount received in excess of the remittances due against any shortages in remittances.
- (2) Except in the case of fraud or intent to evade the TLT, notice of deficiency determinations shall be issued within three years of the period for which the deficiency determination is made.
- (3) The time to remit deficient payment amounts under this section shall be extended if the local tax trustee timely requests a redetermination.

B. Fraud – Refusal to Collect – Evasion. If any transient lodging tax collector fails to collect, report or remit the tax as required, submits a fraudulent return, or otherwise violates or attempts to violate this chapter, the tax administrator shall estimate the tax due, and calculate the amount owing from the transient lodging tax collector for tax remittance, interest and penalties and provide notice to the transient lodging tax collector of the assessment. The determination and notice shall be made and mailed within three years of the discovery by the tax administrator of the violation. The determination is due and payable upon receipt of notice and shall become final 10 business days after the date notice was delivered if no petition for redetermination is filed.

Section 11: REDETERMINATIONS

A. Any person affected by a deficiency determination may file a petition for redetermination with the tax administrator within 10 business days of service of notice of the tax deficiency. A determination becomes final if a petition for redetermination is not timely filed.

B. If a petition for redetermination is filed within the allowable period, the tax administrator shall reconsider the determination and grant an oral hearing if requested. The petitioner shall be allowed at least 20 business days to prepare for the hearing.

C. After considering the petition and all available information, the tax administrator shall issue a redetermination decision and mail the decision to the petitioner. During the redetermination process, the tax administrator may agree to a compromise of the amount due if there is a good faith dispute over the amount owing.

D. The decision of the tax administrator on redetermination becomes final and payment is due 10 business days after the decision is mailed unless the petitioner files an appeal to the city council within that time. The appeal shall be filed with the tax administrator. The city council's decision shall be final when reduced to writing and mailed to the petitioner and all amounts due must be paid within 10 business days of mailing of the city council decision.

Section 12: COLLECTIONS

A. The city may bring legal action to collect on any amounts owed to the city under this chapter within three years after remittance is due to the city or within three years after any determination becomes final.

B. The city is entitled to collect reasonable attorneys' fee in any legal action brought to collect on amount owed to the city under this chapter.

Section 13: LIENS

The city may record a lien in the city's lien docket against any real property owned by a transient lodging provider who receives any portion of the rent from a transient lodging facility located within the city as to any delinquent remittances by the transient lodging provider.

Section 14: REFUNDS

A. Refunds by City to Transient Lodging Tax Collector. If the transient lodging tax collector remits more tax, penalty or interest than is due, the transient lodging tax collector may file a claim in writing stating the facts relating to the claim, within three years from the date of remittance. If the claim is approved by the tax administrator, the excess amount shall be either refunded or credited on any amount due from the transient lodging tax collector.

B. Refunds by City to Occupant. A transient lodging tax collector may file a claim for refund by filing a claim in writing within three years of payment providing the facts relating to the claim for refund. If the tax administrator determines that the tax was collected and remitted to the city and the occupant was not required to pay the tax or overpaid, the city shall issue a refund to the occupant.

C. Refunds by Transient Lodging Tax Collector to Occupant. If an occupant has paid tax to a transient lodging tax collector but stays a total of 30 or more consecutive days in the same transient lodging facility, the transient lodging tax collector shall refund to the occupant any tax collected for any portion of the continuous stay. The transient lodging tax collector shall account for the collection and refund to the tax administrator. If the transient lodging tax collector has remitted the tax prior to the refund or credit to the occupant, the transient lodging tax collector shall be entitled to a corresponding refund or offset if the claim for refund is filed within three years from the date of collection.

D. Burden of Proof. The person claiming the refund shall have the burden of proving the facts that establish the basis for the refund.

Section 15: ADMINISTRATION

A. Use of TLT Funds.¹⁷ Seventy percent of the revenue from the tax rate of [tax rate] shall be used for tourism promotion and tourism -related facilities. Thirty percent of the revenue of the [tax rate] shall be used for City services.¹⁸

B. Records Required from Local Tax Trustee. Every local tax trustee shall keep records of each transaction involving rent and/or collection of TLT. All records shall be retained for at least three years and six months.

C. Examination of Records – Investigations. The tax administrator or agent may examine all records of a local tax trustee relating to receipt of rent and TLT and remittance of tax during normal business hours and may obtain copies of the records to audit returns.

D. Authority of Tax Administrator. The tax administrator shall have the power to enforce this chapter, conduct audits, and to adopt rules, regulations and forms consistent with this chapter. Rules and regulations of general application shall be mailed to all registered transient lodging

¹⁷ The example provided here assumes the city did not have a TLT prior to 2003 and therefore the entire tax is subject to the 70/30 distribution required by state law for newly imposed TLTs. ORS 320.350. If a city has a grandfathered TLT with a different distribution ratio and the city would like to increase the tax rate, it may do so but the increase will trigger the 70/30 distribution required by state law. Although not completely free from doubt, most local governments interpret the 70/30 distribution to only apply to the *increased portion* of the TLT, *not the total revenue* generated from the increased tax as a whole.

For example, if the local government had a 5 percent grandfathered tax with 20 percent going to tourism promotion and 80 percent going to the general fund on or before July 1, 2003, it could continue to apply the 20/80 distribution. However, if the local government increased the tax to 8 percent, the 20/80 distribution would apply to the funds raised by the grandfathered 5 percent and the 70/30 distribution would apply to the funds raised by the 3 percent increase. Sample language for this scenario would be:

Twenty percent of the revenue from the first 5 percent shall be used for tourism promotion and 80 percent of the revenue from the first five percent of the tax shall go into the general fund. Seventy percent of the funds generated by the remaining three percent of the tax may be used for any tourism purpose consistent with state law. Thirty percent of the funds generated by the remaining 3 percent shall go into the general fund.

¹⁸ Cities are advised to closely track TLT funds. The best practice is to form a “Tourism Fund” where the tax revenue is used only for tourism promotion and tourism-related facilities. In this way, if the city’s compliance with ORS 320.350 is ever challenged, the city can prove the funds were used appropriately. If TLT funds are placed in the general fund, or combined with other tax revenue, this may be more difficult.

Likewise, if a city transfers TLT funds to a third party—such as a chamber of commerce—the city should have an agreement with the third party which gives the city the ability to audit the funds to ensure compliance with the law. Please see Appendix C for recommended language to include.

providers. The tax administrator may also issue written interpretations on request of a transient lodging tax collector. As to the transient lodging tax collector to whom the interpretation is issued, the City will act consistently with the interpretation until it is withdrawn, and the city shall provide 30 days' written notice of withdrawal of an interpretation.

E. Confidential Character of Information Obtained – Disclosure Unlawful. The city shall maintain the confidentiality of information provided by transient lodging tax collector. Nothing in this subsection shall be construed to prevent:

- (1) The disclosure to, or the examination of records and equipment by, another city official, employee or agent for collection of taxes for the purpose of administering or enforcing any provisions of this chapter or collecting city business license fees.
- (2) Disclosure of information to the transient lodging tax collector and the transient lodging tax collector's agents.
- (3) The disclosure of the names and addresses of any persons to whom certificates of authority have been issued.
- (4) The disclosure of general statistics regarding taxes collected or business done in the City.
- (5) Disclosures required by ORS Chapter 192.
- (6) Disclosures required by ORS Chapter 297.

Section 16: APPEALS TO CITY COUNCIL

Any person aggrieved by any decision of the tax administrator may appeal to the city council by filing a written appeal with the tax administrator within 10 business days of the serving or mailing of the decision being appealed. The city manager shall schedule the hearing on a city council agenda and provide the appellant notice of the hearing at least 10 business days before the hearing. The city council may agree to a compromise of the amount of tax remittance if there is a good faith dispute over the amount owing. Any person may appeal the issuance of a rule or regulation issued by the tax administrator to the city council by filing a written appeal within 10 business days of the mailing of the notice of the regulation.

Section 17: PENALTY¹⁹

A violation of this chapter is a Class A civil infraction. Each day that a violation remains uncured is a separate infraction.

¹⁹ Cities may want to include a penalty section or make violations subject to the city's general penalty, if applicable.

Appendix C

Model Language for Fund Transfer Agreement with Third Parties

NOTE: This is not a full agreement. Cities will want to craft a full agreement, tailored to their needs, with a third party using TLT tax revenue. This attachment provides sample language to include in such an agreement to ensure cities can monitor how third parties use TLT funds.

- Upon termination of this Agreement, any TLT funds within the control of [third party] shall be immediately returned to the city unless [third party] can demonstrate to the city's satisfaction that such funds are required for the payment of an existing legal obligation related to services provided by [third party] under this Agreement.
- City agrees to disburse to [third party], [percent] of the TLT funds collected during any fiscal year in which this Agreement is in effect. City will make such distributions on a [monthly/quarterly/annual] basis.
- [Third party] agrees to expend funds only for the purposes of "tourism promotion" or "tourism-related facilities" as those terms are defined by ORS 320.300 and in accordance with [reference to specific agreement between third party and city regarding use of funds].
- During the term of this Agreement, [third party] agrees to make a monthly presentation to the city council at one of its regularly scheduled meetings regarding [third party's] progress and accomplishments to date.
- [Third party] agrees to submit an annual fiscal year budget for the use of TLT funds to the city for its review, amendment and adoption in the manner and at the time established by the city during the city budget process for any year in which this Agreement is in effect.
- [City] and its representatives shall have full access to and the right to examine, during normal business hours and as often as they deem necessary, all [third party] records with respect to all matters covered by this Agreement. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls and other matters covered by this Agreement. All documents, papers, time sheets, accounting records, and other materials pertaining to costs incurred in connection with TLT revenue shall be retained by [third party] and all of their contractors for three years to facilitate any audits or inspections.

Appendix D

Model Collection Agreement

COLLECTION AGREEMENT FOR CITY OF [NAME], OREGON TRANSIENT LODGING TAX

**** NB: Following the Passage of HB 4120, Online Booking Companies are now considered “transient lodging intermediaries” under ORS 320.300. Thus, cities no longer need to enter into voluntary agreements with those entities. ****

This Collection Agreement (“Agreement”), dated _____, 201__, is between [online provider], a [state] corporation (“OP”), and the City of [NAME], a municipal corporation (“Taxing Jurisdiction”), collectively referred to as the “Parties.”

RECITALS

- A. OP represents that it provides an Internet-based platform (“Platform”) through which third parties offering accommodations (“Hosts”) and third parties booking such accommodations (“Guests”) may communicate, negotiate and consummate a direct booking transaction for accommodations to which the OP is not a party (“Booking Transactions”).
- B. The Taxing Jurisdiction and OP voluntarily enter into this Agreement to facilitate the reporting, collection and remittance of applicable transient lodging tax (“TLT”) imposed under [insert code section imposing the tax] (“Code”) for booking transactions completed by the Hosts and Guests on the Platform for accommodations located in [City], Oregon (the “Taxable Booking Transactions”).

TERMS OF AGREEMENT

1. Solely pursuant to the terms and conditions of this Agreement, including only for periods in which this Agreement is effective, and solely for Taxable Booking Transactions completed on the Platform, OP agrees contractually to assume the duties of an “operator” as described in [Code section].
2. Starting on [date] (“Effective date”), OP agrees to commence collecting and remitting TLT, pursuant to the terms of this Agreement, at the applicable rate, on Taxable Booking Transactions. Except as set forth in Section 10 of this Agreement, OP shall not assume any obligation or liability to collect TLT for any period or for any transaction prior to the Effective Date or after the termination of this Agreement.²⁰

²⁰ This section waives taxes owed prior to the effective date. If the city would like to collect taxes owed prior to this date, the last sentence should be removed.

3. REMITTANCE OF TLT. OP agrees to aggregate information on the tax return form prescribed by the Taxing Jurisdiction and attached as Appendix G²¹, including all TLT collected from Guests in accordance with this Agreement in the time and manner described in the Code or as otherwise agreed to in writing.
4. OP LIABILITY. OP agrees contractually to assume liability for any failure to report, collect and/or remit the correct amount of TLT, including but not limited to penalties and interest, lawfully and properly imposed in compliance with the Code. No provision of, nor any action taken pursuant to, this Agreement shall impair, restrict or prevent OP or the Taxing Jurisdiction from asserting any legal or administrative claim or defense relating to TLT or refunds under applicable law or otherwise bar either Party from enforcing any rights afforded by law.
5. OP AUDIT.
 - A. During any period for which OP is not in breach of its obligations under this Agreement, the Taxing Jurisdiction agrees to audit OP on the basis of TLT returns and supporting documentation, and agrees not to directly or indirectly audit any individual Guest or Host relating to Taxable Booking Transactions unless and until an audit of OP by the Taxing Jurisdiction has been exhausted with the matter unresolved. The Taxing Jurisdiction reserves the right to audit any individual OP Host for activity not covered by this Agreement or that has been brought to the attention of the Taxing Jurisdiction in the form of a complaint or other means independent of this Agreement or independent of data or information provided pursuant to this Agreement.
 - B. The Taxing Jurisdiction agrees to audit OP on an anonymous numbered account basis for Taxable Booking Transactions. Except as otherwise agreed, OP shall not be required to produce any personally identifiable information relating to any Host or Guest or relating to any Booking Transaction without binding legal process served only after completion of an audit by the Taxing Jurisdiction of OP with respect to such users.²² The Taxing Jurisdiction agrees that it will not audit or issue an assessment against OP more than once per any twelve (12) month period.²³
 - C. OP agrees to register as a Transient Lodging Tax Collector (“Collector”) for the reporting, collection and remittance of TLT under this Agreement and will be the registered Collector on behalf of any affiliate or subsidiary collecting TLT.

²¹ See Appendix G: Transient Lodging Tax Registration Form

²² This provision clearly does not require the Online Provider to produce the names and addresses of the Hosts, which means the City cannot identify if the Host is in compliance with any other local regulations. A city may attempt to negotiate a Collection Agreement with an Online Provider that requires the Online Provider to produce Host names and addresses. If so, this section would need to be modified.

²³ Online Providers may push back and want fewer audits. Some cities have agreed to one audit every 36 months, limited to a 12-month period within the 36 months. The results of the 12-month audit would be projected over the entire 36-month period.

6. GUEST AND HOST LIABILITY. During any period in which this Agreement is effective relating to Taxable Booking Transactions, Hosts shall be permitted but not required to register individually with the Taxing Jurisdiction to collect, remit and/or report TLT, provided OP is in compliance with its obligations under this Agreement.²⁴ Nothing in this Agreement relieves Guests or Hosts from any responsibilities with respect to TLT for transactions completed other than on the Platform, or restrict the Taxing Jurisdiction from investigating or enforcing any provision of applicable law against Hosts for non-Platform transactions.
7. WAIVER OF LOOK-BACK.²⁵ The Taxing Jurisdiction releases, acquits, waives and discharges OP, its current or past affiliated parent or subsidiary companies, directors, shareholders, investors, employees and other agents, and/or Hosts or Guests from any and all actions, causes of action, indebtedness, suits, damages or claims arising out of or relating to payment of and/or collection of TLT or other tax indebtedness, including but not limited to penalties, fines, interest or other payments relating to TLT on any Taxable Booking Transactions prior to the Effective Date. Nothing contained in this Paragraph of this Agreement will constitute a release or waiver of any claim, cause of action or indebtedness that the Taxing Jurisdiction may have or claim to have against any Host or Guest unrelated to Taxable Booking Transactions under this Agreement.
8. NOTIFICATION TO GUESTS AND HOSTS. OP agrees, for the purposes of facilitating this Agreement, that it will notify:
 - a. Hosts that TLT will be collected and remitted to the Taxing Jurisdiction as of the Effective Date pursuant to the terms of this Agreement;
 - b. Hosts of their responsibility to maintain proper books and records; and
 - c. Guests and Hosts of the amount of the TLT collected and remitted on each Taxable Booking Transaction.

OP, in relying on a representation made to it by the Hosts, shall be held to the same standard of reliance in “good faith” with respect to the representations made to OP by the Hosts as is generally required with respect to acceptance of documentation of exemption or non-exempt taxable rents.

9. LIMITATION OF APPLICATION. This Agreement is solely for the purpose of facilitating the administration and collection of the TLT with respect to Taxable Booking Transactions and, except with respect to the rights and liabilities set forth in this Agreement, the execution of or actions taken under this Agreement shall not be considered evidence of or an admission of law or fact under the Code or any other provision of the laws of the United States of America, or any state or local government. Neither Party waives, and expressly preserves, any and all arguments, contentions, claims, causes of action, defenses or assertions relating to the validity of interpretation or applicability of the Code, regulation or application of law.

²⁴ See note above regarding requiring Online Platforms to produce the list of Hosts. If a city would like to make such a requirement, this section would need to be modified as well.

²⁵ This provision means the cities may not seek back taxes. If a city wishes to attempt to collect owed but uncollected TLT revenue, this section should be removed.

10. DURATION/TERMINATION.

- A. This Agreement may be terminated by OP or the Taxing Jurisdiction for convenience on ninety (90)²⁶ days written notice to the other Party. Any termination under this Paragraph shall not affect the duty of OP to remit to the Taxing Jurisdiction any TLT collected from Guests up through and including the effective date of termination of this Agreement, even if not remitted by OP to the Taxing Jurisdiction as of the date of termination.
- B. If the OP terminates the Agreement, such termination will only take effect with at least ninety (90) days written notification by certified or registered mail to each Host offering accommodations in the city through OP's Internet Platform that OP will no longer be collecting TLT for Taxable Booking Transactions.

MISCELLANEOUS

- 11. CHOICE OF LAW. This Agreement, its construction and any and all disputes arising out of or relating to it, shall be interpreted in accordance with the substantive laws of the State of Oregon without regard to its conflict of law principles. Venue shall be in [County], Oregon.
- 12. MODIFICATION. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both Parties.
- 13. MERGER AND INTEGRATION. This Agreement contains the entire agreement of the Parties and supersedes all prior negotiations, agreements and understandings with respect to the subject matter of this Agreement.
- 14. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. The Agreement shall become effective when a counterpart has been signed by each Party and delivered to the other Party, in its original form or by electronic mail, facsimile or other electronic means. The Parties consent to the use of electronic signatures in connection with the execution of this Agreement, and further agree that electronic signatures to this Agreement shall be legally binding with the same force and effect as manually executed signatures.
- 15. RELATIONSHIP OF THE PARTIES. The Parties are independent entities and have no relationship with each other except for the contractual relationship established by this Agreement. The Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency or employment relationship between the Parties. There are no third-party beneficiaries to this Agreement.

²⁶ Jurisdictions have successfully negotiated longer and shorter termination notice periods.

16. **WAIVER AND CUMULATIVE REMEDIES.** No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated in this Agreement, the remedies provided by the Agreement are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.
17. **FORCE MAJEURE.** Neither Party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that Party's reasonable control and occurring without that Party's fault or negligence, including but not limited to, acts of nature, acts of government, flood, fire, civil unrest, acts of terrors, strikes or other labor acts, or attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.
18. **ASSIGNMENT.** Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, OP may assign this Agreement in its entirety without consent of the Taxing Jurisdiction in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets, but shall provide Taxing Jurisdiction notice if any merger, acquisition, reorganization or sale results in a change of name or address for the notices required under Paragraph 20.
19. **SEVERABILITY.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of the Agreement shall remain in effect.
20. **NOTICES.** All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (a) personal delivery; or (b) the third business day after first-class mailing postage prepaid; or (c) the second business day after sending by overnight mail; or (d) facsimile with telephonic confirmation of receipt. Notices shall be addressed to the attention of the following persons, provided each Party may modify the authorized recipients by providing written notice to the other party. This paragraph does not supersede the provisions outlined in paragraph 10 therein.

To OP:

[address]

To Taxing Jurisdiction

[address]

IN WITNESS WHEREOF, OP and the Taxing Jurisdiction have executed this Agreement effective the date set forth in the introductory clauses.

Appendix E

Model Ordinance Amending an Existing Tax

NOTE: Please see TLT Guidebook “How Cities Can Use TLT Revenue” section entitled “Other Amendments to a Grandfathered Transient Lodging Tax Ordinance” for more information on amending an existing tax.

AN ORDINANCE OF THE CITY OF [NAME] AMENDING [CHAPTER] OF THE [CITY CODE] IMPLEMENTING THE TRANSIENT LODGING TAX TO COLLECT FROM TRANSIENT LODGING LISTING ON HOSTING PLATFORMS

WHEREAS, a local transient lodging tax (“TLT”) is a tax imposed by [City] on the sale, service or furnishing of transient lodging;

WHEREAS, transient lodging includes hotel, motel, and inn dwelling units that are used for temporary overnight human occupancy; spaces used for parking recreational vehicles or erecting tents during periods of human occupancy; or houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units, that are used for temporary human occupancy;

WHEREAS, [City] adopted [code chapter] on [date] implementing a [percent] transient lodging tax; and

WHEREAS, transient lodging tax collectors, as that term is used in ORS 320.300, are responsible for collecting and remitting the tax to the city.

NOW THEREFORE, BASED ON THE FOREGOING, THE CITY OF [NAME] ORDAINS AS FOLLOWS:

Section 1: [Code Section Imposing the Tax] is amended to read:²⁷

Effective [effective date], each transient lodging tax collector, including lodging tax intermediaries, shall collect a TLT in the amount of [tax rate] percent of the rent. TLT amounts shall be rounded down to the nearest cent. The transient lodging tax collector shall maintain records of all rent charged and TLT payments received. If rent is paid in installments, a proportionate share of the TLT shall be paid by the occupant to the transient lodging tax collector with each installment unless the occupant pays the entire amount with the first payment.

²⁷ Be sure not to repeal the code section imposing the tax. If the city has a grandfathered tax, repealing the grandfathered tax and replacing it with a new tax may trigger the 70/30 distribution requirement for the tax revenue from the entire tax. Pursuant to the Oregon Court of Appeals decision in *Homebuilders Ass’n of Metropolitan Portland v. Metro*, 250 Or App 437 (2012), a local government may amend a tax ordinance without imposing a “new tax” so long as the amendments do not directly bear on the tax imposition. As a result, a local government may amend an existing tax without imposing a new one if the amendments are administrative and do not change the class of persons or things being taxed, or the rate of the tax. The amendments suggested here are designed to keep the tax rate and classes of transient lodging unchanged. Cities should verify that the amendments do not expand the city’s current definition of transient lodging.

Section 2: All other subchapters of the [city code chapter] are hereby repealed and replaced to read as set forth in Exhibit A.²⁸

²⁸ Exhibit A is the text from the Model TLT Ordinance included with this guidebook.

Appendix F

Model Ordinance Increasing and Amending an Existing Tax

NOTE: Please see TLT Guidebook “How Cities Can Use TLT Revenue” section entitled “Other Amendments to a Grandfathered Transient Lodging Tax Ordinance” for more information on amending an existing tax.

AN ORDINANCE OF THE CITY OF [NAME] AMENDING [CHAPTER] AND INCREASING THE TRANSIENT LODGING TAX

WHEREAS, a local transient lodging tax (TLT) is a tax imposed by [City] on the sale, service or furnishing of transient lodging;

WHEREAS, transient lodging includes hotel, motel and inn dwelling units that are used for temporary overnight human occupancy; spaces used for parking recreational vehicles or erecting tents during periods of human occupancy; or houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units, that are used for temporary human occupancy;

WHEREAS, [City] adopted [code chapter] on [date] implementing a [percent] transient lodging tax;

WHEREAS, [City] wishes to increase the tax by [X] percent to [new rate]; and

WHEREAS, pursuant to ORS 320.350(5)-(6), at least 70% of the revenue from the increased portion of the tax shall be used for tourism promotion, tourism-related facilities or to finance or refinance the debt of tourism-related facilities and reasonable administrative costs, if allowed by state law.

NOW THEREFORE, BASED ON THE FOREGOING, THE CITY OF [NAME] ORDAINS AS FOLLOWS:

Section 1: [Code Section Imposing the Tax] is amended to read:²⁹

Effective [DATE], each transient lodging tax collector shall pay a TLT in the amount of [new rate] percent of the rent. The transient lodging tax collector shall pay the TLT with the rent to the tax administrator. TLT amounts shall be rounded down to the nearest cent. The transient lodging tax collector shall maintain records of all rent charged and TLT payments received. If rent is paid in installments, a proportionate share of the TLT shall be paid by the transient lodging tax collector to the tax administrator with each installment unless the transient lodging tax collector pays the entire amount with the first payment.

²⁹ Be sure not to repeal the code section imposing the tax. If the city has a grandfathered tax, repealing the grandfathered tax and replacing it with a new tax may trigger the 70/30 distribution requirement for the tax revenue from the entire tax.

Section 2: All other subchapters of the [city code chapter] are hereby repealed and replaced to read as set forth in Exhibit A.³⁰

³⁰ Exhibit A is the text from the Model Ordinance included with this Guidebook. Make sure to amend the language in the “Administration” section, subsection A, to reflect the rate increases the city is implementing.

Appendix G: Model TLT Registration Form

CITY OF [NAME]

Transient Lodging Tax
[Address]
Phone: [Insert #]
Email:[Insert address]
Web: www.[insert address]

Transient Lodging Tax Registration Form

Property Information

Name of Property/Business (including Doing Business As)

Property Address

City/State

Zip

Type of Business (check one): Hotel/Motel B&B House Townhouse/Condo
 RV Park Online Retailer Other

Ownership Information (check one): Individual Partnership Corporation

Name (last/first)

Title

Phone Number

Email Address

Mailing Address

City/State

Zip

Names of Additional Owners, Partners, or Corporate Officers

Name (last/first)

Title

Phone Number

Email Address

Name (last/first)

Title

Phone Number

Email Address

Records/Remittance Information (if different from above)

Individual/company responsible for the completion of the monthly tax form and payment of the taxes

Business Name

Contact Person

Phone Number

Email Address

Mailing Address

City/State

Zip

Signature

Date

Short-Term Rental Operator License # _____ **Land Use Permit #** _____

Business License # _____

Appendix H: Model TLT Remittance Form

CITY OF [NAME]

Phone:
Website:

Email:

OFFICE USE ONLY	
Date received	
Receipt number	

Transient Lodging Tax Remittance Form

**To report multiple locations, please use the Multiple Locations Reporting Form located on our website.

Account Information			
Name of property/business (including Doing Business As)			Reporting month
Property address			Reporting year
Name of transient room tax contact	Phone number	Email address	

FORM DUE MONTHLY BY THE 15TH FOR THE PRECEEDING MONTH, EVEN IF NO GROSS RENT WAS RECEIVED

1. Gross rent	1.	\$
2. Allowable exemptions:		
2a. Monthly rent (greater than 30 consecutive days)..	2a.	\$
2b. Rent from authorized Federal employees.....		\$
2c. Rent from transient lodging intermediaries	2c.	\$
2d. Other exemptions (please explain).....	2d.	\$
3. Total allowable exemptions (sum of lines 2a through 2d)	3.	\$
4. Taxable rent (line 1 minus line 3).....	4.	\$
5. Tax rate	5.	[insert %]
6. Tax due (line 4 multiplied by line 5).....	6.	\$
7. Excess tax collected	7.	\$
8. Total tax collected (line 6 plus line 7).....	8.	\$
9. Rebate rate for administrative costs	9.	[insert %]
10. Rebate amount (line 8 multiplied by line 9).....	10.	\$
11. Net tax due (line 8 minus line 10).....	11.	\$
12. Penalties	12.	\$
13. Interest.....	13.	\$
14. Previous balance	14.	\$
15. TOTAL DUE (sum of lines 11 through 14).....	15.	\$

I declare, under penalty of false swearing, that to the best of my knowledge, the information herein is true, correct, and complete.

Signature	Title	Date
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Print completed form and mail with payment to:

MAKE CHECK OR MONEY ORDER PAYABLE TO CITY OF [NAME]. To pay by Visa or MasterCard, email your form to [insert email] and call in your payment to [insert phone number].

Line 1	Gross Rent: Enter the gross rent received for occupancy in transient lodging for the month. "Rent" means the amount paid or payable by an occupant for the occupancy of space in transient lodging. If a separate fee is charged for services, goods or commodities and that fee is optional, that fee is not included in rent. Rent includes all fees and assessments based on the number of occupants (human and/or pets) for which payment is not considered optional to the occupant.
Lines 2a-2d	Exemptions/Exclusions: Enter any gross rents that are not subject to tax or that are excluded from your total gross rents. The most common exemptions and exclusions are:
2a	Monthly Rent: A dwelling unit that is leased or otherwise occupied by the same person for a consecutive period of 30 days or more.
2b	Rent from Authorized Federal Employees: Employee of the federal government while on federal business. This exemption does not include state or local government employees.
2c	Rent from Transient Lodging Intermediaries: Gross receipts from transactions with transient lodging intermediaries, i.e.: Online Travel Companies. Do not include transactions for which you collected the tax directly from customers, or transactions for which you received the tax from intermediaries. Complete and attach page 2, Report of Gross receipts from transient lodging intermediaries.
2d	Other Exemptions: Please explain.
Line 3	Total Exemptions/Exclusions: Sum of all exemptions.
Line 4	Taxable Rent: Subtract Total Exemptions (line 3) from Gross Rent (line 1).
Line 5	Current City of [Name] Tax rate: [insert %]
Line 6	Tax due:
Line 7	Excess Tax: Enter any excess tax collected from occupants.
Line 8	Total Tax Collected: Enter the amount of tax collected or required to be collected according to the lodging property's books and records (this amount should total line 6 plus line 7). Please explain any differences.
Line 9	Current Rebate Rate for Administrative Costs: [insert %]
Line 10	Rebate for Administrative Costs: Multiply Total Tax Collected (line 8) by [insert %] (line 9)
Line 11	Net Tax Due: Subtract Rebate for Administrative Costs (line 10) from Total Tax Collected (line 8)
Line 12	[Insert %] Penalty – 30 Days or Less Past Due: If applicable, multiply Net Tax Due (line 11) by [insert %]. If you fail to file the return and remit payment by the 25th day of the month following collection of the tax, a penalty of [insert %] of the tax amount is due. [Insert %] Penalty – Greater than 30 Days Past Due: If applicable, multiply Total Tax Due (line 11) by [insert %]. If the return and remittance are submitted more than 30 days past the due date, the penalty increases by another [insert %] of the tax for a total penalty of [insert %] of the tax.
Line 13	Interest: If applicable, multiply Total Tax Due (line 11) by 1%. If the return and remittance are not submitted by the due date, in addition to the penalties, interest of 1% (per month) of the tax is owed.
Line 14	Previous Balance - Adjustment for Prior Shortage or Overage: Use this line to reflect any shortages or overages of prior periods.
Line 15	Total Tax Remittance: Add and/or subtract, as appropriate, Net Tax Due (line 11), Penalties (line 12), Interest (line 13), and Previous Balance (line 14). Remit this amount to the City of _____.

