

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA REQUEST

TO: Board of Commissioners
Philip Morley, County Administrator

FROM: Karl Hatton, JeffCom 911 Director

DATE: May 27, 2014

RE: Agreement for State Administration of County Enhanced 911
Excise Taxes

STATEMENT OF ISSUE:

The Department of Revenue has updated the Agreement for State Administration of County Enhanced 911 Excise Taxes. This agreement was updated to include recent legislative changes, including changes related to tax on prepaid wireless services.

ANALYSIS:

The new legislation adds no-contract, prepaid cell phones to the 911 excise tax already being collected on other types of cell phones and land lines.

FISCAL IMPACT:

Revenue neutral

RECOMMENDATION:

Approve the agreement with DOR

DEPARTMENT CONTACT:

Karl Hatton, ext. 788

REVIEWED BY:


Philip Morley, County Administrator

5/28/14
Date

AGREEMENT FOR STATE ADMINISTRATION OF COUNTY ENHANCED 911 EXCISE TAXES

THIS AGREEMENT ("Agreement") is entered into by and between Jefferson County and the State of Washington Department of Revenue ("Department") for the administration of county enhanced 911 excise taxes under chapter 82.14B RCW. This Agreement is effective January 1, 2014.

WHEREAS, the Legislature of the State of Washington has authorized the County under chapter 82.14B RCW to impose enhanced 911 excise taxes on switched access lines, radio access lines, and interconnected voice over internet protocol service lines; and

WHEREAS, the Legislature of the State of Washington has made changes to chapter 82.14B RCW in the laws for 2013, 2nd Special Session, and the County and Department wish to clarify the application of terms in this Agreement in light of that law.

WHEREAS, chapter 82.14B RCW requires counties imposing county enhanced 911 excise taxes to contract with the Department for the administration and collection of the taxes; and

WHEREAS, the County has by ordinance, a copy of which is attached hereto (the "Ordinance"), elected to impose:

1. An enhanced 911 excise tax on switched access lines of seventy cents (70 ¢) as provided under chapter 82.14B RCW.
2. An enhanced 911 excise tax on radio access lines used by subscribers of seventy cents (70 ¢) per month, and on such lines used by prepaid consumers of seventy cents (70 ¢) per retail transaction, as provided under chapter 82.14B RCW.
3. An enhanced 911 excise tax on interconnected voice over internet protocol service lines of seventy cents (70 ¢) per month as provided under chapter 82.14B RCW.

NOW, THEREFORE, to provide for the administration and collection of the county enhanced 911 excise taxes imposed by the Ordinance, the parties agree as follows:

1. The Department shall exclusively perform all functions incident to the administration and collection of the county enhanced 911 excise taxes imposed by the ordinance referenced above, other than criminal prosecutions. The parties intend any notification that the Department sends to taxpayers in the course of its administration of the taxes to also serve as notice from the counties.
2. The Department shall retain from the county enhanced 911 excise taxes so collected the amount of one percent (1%) thereof to cover administration and collection expenses incurred by the Department. Said percentage amount shall be subject to review during January of each year, PROVIDED, HOWEVER, that no change in the percentage retained shall be effective without an amendment to this Agreement.

3. In accordance with chapter 82.14B RCW, the remainder of the county enhanced 911 excise taxes so collected shall be deposited by the Department in the county enhanced 911 excise tax account in the custody of the State Treasurer. The moneys that accrue in the county enhanced 911 excise tax account shall be distributed as provided by law.
4. Insofar as they are applicable to the administration, collection, and enforcement of enhanced 911 excise taxes, the Department shall apply the general administrative provisions contained in chapter 82.32 RCW to the performance of its duties under this Agreement. The Department shall perform its duties under this Agreement so that as far as possible the county enhanced 911 excise taxes are administered and collected uniformly with the state enhanced 911 excise taxes. Rules to be adopted by the Department to facilitate the administration and distribution of the state and county enhanced 911 excise taxes shall be adopted in accordance with chapter 34.05 RCW, the State Administrative Procedure Act.
5. The allocation of county enhanced 911 excise tax collections will be made by the Department to the State Treasurer within thirty (30) days after the due date of the taxable period for which county enhanced 911 excise taxes are imposed. Allocation of any unidentifiable county E911 tax collections (commonly called "pool funds") by the Department among the various local taxing jurisdictions will also be made within thirty days. Distribution of taxes to the County shall be made in accordance with chapter 82.14B RCW.
6. The County must notify the Department in writing of a change in the county enhanced 911 excise taxes no less than seventy-five (75) days before the effective date of the change.
7. Chapter 82.32 RCW provides a mechanism for taxpayers to seek refunds or credits for overpaid taxes. All refunds and credits for County enhanced 911 excise taxes shall be charged to the County.
8. The Department shall require redistribution upon ten (10) days notice to the affected county when it determines that any county enhanced 911 excise tax has been distributed to a county other than the county entitled to the tax. Such redistribution shall not be made with respect to amounts originally distributed earlier than six (6) monthly periods before the monthly period in which the Department determines that improper distribution occurred. If a dispute arises between or among the counties as to which county is entitled to particular funds collected under any county's enhanced E911 excise tax, the Department shall determine which county is entitled to the disputed funds. A dispute between a county and the Department regarding the Department's determination shall be resolved according to paragraph 11 of this Agreement.
9. The Department shall provide taxpayer information, documentation, and reports to the County in accordance with the disclosure limitations of RCW 82.32.330. Upon request by the County, the Department shall provide: the names of all taxpayers collecting the County's enhanced 911 excise taxes; the number of switched access lines, radio access lines or retail transactions as applicable, and interconnected voice over internet protocol service lines on which each taxpayer

collected the County's enhanced 911 excise taxes by collection period; and the amount of the County's enhanced 911 excise tax, by type of line or transaction as applicable, collected and remitted by each taxpayer by collection period. The Department shall not be obligated to provide this information more frequently than monthly. Insofar as practicable, the Department shall provide this information electronically. Authorized representatives of the County requesting and receiving confidential information must sign a Department Tax and License Confidentiality Affidavit and comply with RCW 82.32.330. Among other things, RCW 82.32.330 provides that unauthorized disclosure of confidential tax information is a misdemeanor. The County shall have the right from time to time to examine the records of the Department as they concern the County or the taxpayers of the County subject to the County enhanced 911 excise taxes, subject to the limitations of RCW 82.32.330.

10. The parties agree to establish and maintain open lines of communication and to work cooperatively in order to improve administration of the County enhanced 911 excise taxes. Either party may initiate a meeting, to be held at a mutually convenient time and place, to share information and to discuss matters related to administration and collection of County enhanced 911 excise taxes.
11. In the event that a dispute arises under this Agreement, either party may elect mediation in which the Department and County shall each individually appoint one member to a Dispute Board and those members shall select a third member.

In the event a dispute arises between or among counties as described in paragraph 8, a county that disagrees with the Department's resolution of the issue may elect mediation. In that case, each county claiming entitlement to the disputed funds and the Department shall individually appoint one member to a Dispute Board. If the number of members is odd, then no additional members need to be appointed. If the number of members is even, then the members of the Dispute Board shall together select one additional member.

The Dispute Board shall evaluate the dispute and make a written determination after considering the relevant facts and legal authorities. The Dispute Board's determination shall be given significant weight by both parties who will meet after the determination is issued to resolve the dispute. If a resolution is not reached, the determination of the Dispute Board shall be admissible in any future legal proceeding between the parties concerning the dispute. Each party shall be responsible for a proportionate share of the costs of the members of the Dispute Board. This remedy is not intended to be exclusive of other remedies existing in law, by statute, or otherwise.

12. This Agreement shall be governed by the laws of the State of Washington.
13. To the extent permitted by law, the County agrees to defend and hold harmless the Department or the State of Washington from claims that challenge the authority of the County to impose the county enhanced 911 excise taxes identified in the aforementioned Ordinance. The County

understands that in the event of a legal challenge to the Ordinance or otherwise, the Department shall not be obligated to represent the County or otherwise to defend the County's position in any proceeding relating to such challenge.

14. The parties to this Agreement will notify each other in a timely manner when they find it necessary to request an amendment to this Agreement. No changes in or additions to this Agreement shall be made except as agreed to by both parties, reduced to writing, and executed with the same formalities as are required for the execution of this Agreement.
15. The following persons (or their successors) shall administer this Agreement on behalf of the parties. Any notice required by this agreement shall be achieved by providing written notice to the persons listed below (or their successors). Any party appointing a new person to administer the Agreement shall also provide notice of the change to the other party along with the appropriate contact information for the new person (e.g. phone number and email address).

Andy Van Gerpen
Department of Revenue
P.O. Box 47476
Olympia, WA 98504-7476
360-902-7122

Karl Hatton
Jefferson County
81 Elkins Rd
Port Hadlock, WA, 98339
360-344-9788

16. This agreement represents the entire agreement between the parties and no other statements or representations shall be deemed a part thereof. The recitals to this Agreement are incorporated by reference and are part of the Agreement. This Agreement may be executed in two original counterparts, and each counterpart shall constitute but one and the same instrument. Duplicate copies of the Agreement shall have the same force and effect as the original copies.
17. The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the remainder of the contract.
18. This Agreement supersedes the parties' prior agreement and takes effect at 12:01 AM, January 1, 2014, and shall thereafter be automatically renewed on December 31 of each year unless one of the parties gives written notice of termination on or before November 1 of each such year.

IN WITNESS WHEREOF, the State of Washington Department of Revenue and Jefferson County have executed this Agreement as of the day and year written below.

Date

Janetta Taylor
Senior Assistant Director
Department of Revenue

Date

John Austin
County Commissioner
Jefferson County

Approved as to form: __Template with signature on file__

Josh Weissman
Assistant Attorney General
State of Washington

Approved as to form only
David Alvarez 5/16/14
Jefferson Co. Prosecutor's Office
David Alvarez, Chief Civil DPA