

Parking Tax in Washington State

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The Washington State Legislature recently passed legislation that increased funding for transportation purposes. The new law allowed for several local option taxes, including a commercial parking tax. The objectives of this measure were not only to help local jurisdictions raise revenues, but also to provide them with a transportation demand management tool. The Washington State Transportation Center will conduct an evaluation of the new law. The research approach is outlined, including a description of the new legislation, the potential impacts of its implementation, and a process that will be used to evaluate the effectiveness of various alternatives. Because no jurisdiction in Washington has adopted a parking tax based on the legislation, it is premature to conduct an evaluation of its transportation demand management effects. The new law has characteristics that make it different from those enacted in other localities. First, the law is flexible enough to give local jurisdictions freedom to decide on the type of tax to impose and how to impose it. Second, the new law allows local jurisdictions to apply the tax to all parking, even if it is supplied with a lease of nonresidential space and if no fee is charged for the use of the parking spaces. A third distinctive element of the tax is flexibility in charging the tax for different types of use. A fourth unique aspect of the law is that the revenue collected must be used for transportation purposes. Two important sets of legal issues concerning implementation of the parking tax are discussed. The first set is concerned with whether the tax is construed as a property tax or an excise tax. In Washington constitutional questions must be addressed if it is considered a property tax. The second set of issues concerns the definition of a reasonable distinction in charging differential rates.

Parking policy is a crucial element in transportation demand management. Because parking is essential at some point for virtually all automobile trips, the price of parking has a strong influence on whether people choose to make their trips by automobile. Parking is usually the most sensitive variable in modal split models. The availability and cost of parking are crucial factors in decisions of investment and residential or job location. Because of the importance of parking, any policy affecting its price is a sensitive political issue.

A parking tax is one way to influence the cost of parking. The tax can be both a revenue-generating tool and a transportation demand management device. Virtually all studies of parking price concur that transportation choices are highly dependent on the cost level, but the best way to impose a parking tax that will have the desired effect on mode choice and frequency of travel is not clear. A parking tax can certainly raise revenues, but unless it is transferred directly to the parkers and they perceive the additional cost, it is unlikely to be a useful tool in transportation demand management.

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ternatives provided the legal framework for a commercial parking tax. The objectives of this measure were not only to help local jurisdictions raise revenues, but also to provide them with a transportation demand management tool to alleviate increasingly heavy traffic conditions.

In the following sections, the elements that distinguish this legislation from other existing parking taxes are examined, and research on the implementation of the legislation currently under way at the Washington State Transportation Center (TRAC), a consortium of the University of Washington, Washington State University, and the Washington State Department of Transportation, is detailed. However, because no jurisdiction in Washington has adopted a parking tax based on the legislation, it is premature to conduct an evaluation of its transportation demand management effects.

In Washington State, as elsewhere, free parking is the norm for most commuters. For instance, in King County about 80 percent of those who drive to work receive free parking (1). However, so-called "free" parking is free only to the parkers. Somebody pays the direct costs of the land where the cars park and its improvements. Someone also pays for the costly expense of parking lot maintenance.

In addition, free parking results in indirect costs. Its existence encourages the use of single-occupancy vehicles (SOVs), which contributes to fuel consumption and air pollution (2) and leads to increasing traffic congestion and greater investments in the transportation infrastructure. Shoup (2) summarizes the impact of free parking by stating that "free parking benefits only those who drive to work, and does even that unequally because it disproportionately rewards solo drivers."

The legislators who supported the parking tax in Washington State emphasized the transportation demand management possibilities more than the revenue-generating prospects. Those who backed the new law based their support on the impact of a parking tax on trip reduction and the promotion of mass transit and other ridesharing options. This emphasis was continued by the Washington Environmental 2010 Action Agenda, an environmental initiative unveiled by the state governor 4 months after the parking legislation passed. The initiative recommended higher parking-meter fees and new local parking taxes in an effort to wean commuters from their cars. It also encouraged the use of other financial incentives to promote carpooling and use of mass transit. The main reason for the initiative was to avoid an increase in Washington's production of carbon dioxide and other greenhouse gases (3).

NEW LEGISLATION IN WASHINGTON STATE

On March 14, 1990, Governor Booth Gardner of Washington State signed into law Senate Bill 6358, which approved a \$1.1

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billion transportation package. To finance several highway and other transportation projects, the new law included, among other elements, increases in the state fuel tax, the motor-vehicle excise tax, and the gross-weight fees paid by truckers. Section 208 of the bill, entitled "Local Option Commercial Parking Tax," authorized cities and counties of the state to impose two types of taxes on commercial parking.

The first form of the tax can be imposed on persons engaged in a commercial parking business. The tax rate can be based either on gross proceeds or on the number of stalls available for parking use. The second form of commercial parking tax applies directly to the user and is imposed on the act or privilege of parking a motor vehicle in a facility operated by a commercial parking business. This second form is available as an alternative to, rather than in addition to, the first tax.

In levying the tax, the city or county may provide that

- The tax be paid by the operator or owner of the motor vehicle;
- The tax applies to all parking for which a fee is paid, whether paid or leased, including parking supplied with a lease of nonresidential space;
- The tax is collected by the operator of the facility and remitted to the city or county;
- The tax is a fee per vehicle or is measured by the parking charge;
- The tax rate varies with the zoning or location of the facility, duration of the parking, time of entry or exit, type or use of the vehicle, or other reasonable factors, but the rates charged must be uniform for the same class or type of commercial parking business; and
- Tax-exempt carpools, vanpools with handicapped decals, or government vehicles are exempt from the tax.

The legislation included the following definitions:

"Commercial parking business" . . . means the ownership, lease, operation, or management of a commercial parking lot in which fees are charged. "Commercial parking lot" means a covered or uncovered area with stalls for the purpose of parking motor vehicles.

The law also specified that a city may impose either tax within its incorporated boundaries and that a county may impose either tax only within its unincorporated area. Each local government may develop, by ordinance or resolution, rules for administering the tax, including provisions for reporting by commercial parking businesses, collection, and enforcement and provisions for payments of either tax to be made on a monthly, quarterly, or annual basis.

The revenues generated by the parking tax must be used for transportation purposes. The legislation defined transportation purposes as "including but not limited to the . . . operation and preservation of roads, streets, and other transportation improvements; new construction, reconstruction, and expansion of city streets, county roads, and state highways and other transportation improvements; development and implementation of public transportation and high-capacity transit improvements and programs; and planning, design, and acquisition of right of way and sites for such transportation purposes."

DISTINCTIVE CHARACTERISTICS OF THE LAW

The Washington State parking tax law has characteristics that make it different from similar legislation enacted in other localities. First, the law is flexible enough to give cities and counties the freedom to decide on the type of tax to impose and how to impose it. For instance, cities and counties can decide whether to charge the persons engaged in a commercial parking business or charge for the act or privilege of parking a motor vehicle. Also, the tax may be levied as a fee per vehicle or be proportional to the parking charge. The rate may vary with the zoning or location of the facility. The flexibility given local jurisdictions in how and where to impose the tax improves its transportation demand management potential.

Second, the new law allows cities and counties to apply the tax to all parking, even if it is supplied with a lease of non-residential space and if no fee is charged to individuals for the use of the parking spaces. This option provides jurisdictions with a unique and powerful transportation demand management tool because it will enable them to charge a tax for the privilege of parking even when employers provide free parking to their employees.

A third distinctive element of the tax is flexibility in charging the tax for different types of use. Because cities and counties may provide that the tax rate vary with the duration of the parking, the time of entry and exit, and the type of use of the vehicle, the tax can be used to discourage SOVs and to reduce congestion. Local jurisdictions are able to confine charges to long-term parking and thus confine the impact to those who commute alone to work. This ability is complemented by the provision of the law that allows cities and counties to exempt carpools and vanpools from the tax, thus providing local jurisdictions with a unique transportation demand management tool. In addition, limiting the charges only to commuting uses lessens the resistance to such a tax from the business community.

A fourth unique aspect of the law is that the revenue collected cannot be deposited in the general fund, as it is in other jurisdictions. The law specifies that the revenue can be used only for transportation purposes.

Table 1 presents a comparative description of parking taxes already in existence or that have been considered in U.S. cities. In all cases, except Montgomery County, Maryland, the taxes have been basically a surcharge on fees collected for parking. This method of taxing has not allowed jurisdictions to have an impact on free parking. In addition, taxes have been collected regardless of duration, time of day, or vehicle use. This practice has limited the jurisdictions' ability to take advantage of the transportation demand management potential of a parking tax.

LEGAL ISSUES

Two important sets of legal issues need to be considered in implementing a parking tax under the new legislation. One is somewhat unique to the state of Washington. According to the Washington State Constitution, property taxes must be applied uniformly to all property, regardless of use. Thus, whether the parking tax is construed as a property tax or an

TABLE 1 PARKING TAXES ADMINISTERED IN OTHER PARTS OF THE COUNTRY

City/ County/ State	Status	Type/Rate	Collection	Exemption	Required Records	Auditing	Penalties, Fines
Baltimore	Ord. 318/ 89 Council Bill 551	City tax \$.40/day or less, \$2.75/week, \$11.00/month.	By the operator together with the charges for parking. Remitted monthly to the Department of Finance	Residential Parking (meters not mentioned)	Of all motor vehicles parked on hourly, daily, weekly, monthly or other basis + amount of tax collected from all transactions.	By Director of Finance or other city representatives or employees.	Tax due + interest (1%/month) + penalty (10% of tax due).
Chicago	Municipal Code	\$.90/vehicle/day \$4.50/vehicle/week \$18/vehicle/month	By the operator together with the parking charge. Remitted to the Dept. of Revenue on a quarterly basis.	Residential parking	Of all vehicles parked. Copies of receipts.	By Dept. of Revenue.	\$50 - \$300 first offense. \$50 - \$500 second & subsequent offenses. For more than three offenses, incarceration is possible.
Los Angeles	Projected Approved	City tax 10% of the parking fee	By the operator together with the parking fee. Remitted to the City Clerk on a quarterly basis.	Parking meters. Residential parking (if there is any charge)	All records necessary to determine the amount of the tax.	By City Clerk.	Tax due + interest (%) + penalty (%).
Montgomery Co.	Vetoed	Excise tax \$60/parking space/year	Tax return to be filed by operator. Tax due and payable on a yearly basis (February).	Parking meters. Park & Ride lots. Lots not commercial parking, business. Small lots owned by businesses that pay parking tax. Lots operated by municipal, state, and/or federal government. Reduction if TDM measures implemented.	Registration forms (with Director of Finance). No other requirement.	No procedure provided.	Tax due + interest (1%/month) + penalty (5%/month or fraction up to 25% of tax).
New York	Ord. 846 New York City (+ State since 6/1/90)	Sales tax 18 1/4% (State) + 6% (City) of parking charge	By the vendor together with the charge. Remitted to Tax Commission	Residential parking. Parking meters.	Of all occupancies & all amounts and taxes paid.	By Tax Commission or duly authorized agent or employee.	Tax due + interest (1%/month) + penalty (5% of amount due)
Pittsburgh	Ord. 52-19	City tax 25% of consideration/ transaction	By the operator. Remitted to the Treasurer on a monthly basis.	Residential Parking (Meters not mentioned).	Of completion of all parking transactions reflecting total amount of fee + total amount of tax.	By Treasurer or his designated agents.	Tax due + penalty (5%/month or fraction up to 50% of the tax).
San Francisco	Mun. Code Part III/ Art. 9, Ord. 286/70	City and county tax 20% of the rent	By the operator together with the rent. Remitted to the Tax Collector on a quarterly basis.	Parking meters. Residences or hotels. Armed forces. Cars owned by banks or insurance companies. Government Consular cars under certain circumstances.	As required by the Tax Collector.	Of records and equipment by the Tax Collector or any person authorized by him.	Tax due + interest (1%/month or fraction) + penalty (10% of the amount due). [+ penalty for fraud or interest to evade (25% of the amount due)]
Washington, D.C.	D.C. Code Chapter 20 M. R. Title 9, Sec. 400	Sales tax 12% of gross receipts from the charge	By the vendor together with the charge for parking. Remitted to the Collector on a yearly basis.	Residential parking (meters not mentioned). Parking sales to public institutions under certain circumstances.	Of all transactions, even tax-free sales.	By the Mayor or his duly authorized representatives.	Tax due + interest (1 1/2%/month or fraction) + penalty (5% for each month due up to 25%) [+ penalty for fraud: 75% of tax due + 50% of interest due + 20% if understatement].

excise tax is important. If it is an excise tax, the law remains secure. However, if it is a property tax, the parking tax would not withstand constitutional scrutiny because it taxes one type of property (i.e., that used for parking) differently from other types of property. The second set of issues concerns the definition of a reasonable distinction in charging differential rates.

Property Versus Excise Tax

Even though some case law suggests otherwise, the strongest evidence is that the newly enacted commercial parking tax can be construed as an excise tax, if it is properly designed. The legislature clearly intended that the tax be an excise tax; the law includes language imposing a tax on the transaction of leasing commercial parking or using property for that purpose or for the privilege of operating a commercial parking business, rather than on property used for parking. However, legislative intent is not legally sufficient to guarantee that the tax will be construed as an excise tax.

A tax is an excise tax if it is imposed on the use or transfer of property rather than on the property itself. Disregard for the legal implications in the definition of, or administration of, the tax may lead to legal difficulties. For instance, if the tax rate is determined by the value of the property, it may

be construed as a property tax. Because legal challenges to the tax are inevitable, it is important that care be exercised in defining the parking tax.

In the case of a tax imposed on the owner or operator, there is some concern that such a tax could be construed as a property tax. Some case law maintains that a tax on rents from real estate is a tax on the real estate itself. However, more recent cases cast doubt on this assertion. First, a parking tax imposes an excise on the use of property as opposed to a tax on the property itself. Second, a parking tax can be distinguished from a tax on rental income. Rental of property implies the exclusive right of continuous possession. Parking is more in the nature of a license to use real estate, which is subject to a business and occupation tax. The legality of that kind of tax has been tested in court.

In the case of the tax imposed on consumers, a user fee imposed on the consumer either as a flat per-car tax or on the basis of some percentage of the parking fee is different in character from a tax measured by the owner's revenues and imposed on the owner. The consumer's interest is far enough removed from the real property to be considered a rental income case. Also, a tax on the consumer is more clearly a use or privilege tax than a property tax (J. Reich, letter to R. Posthuma, Municipality of Metropolitan Seattle, June 19, 1990).

Reasonable Classifications in Structuring the Parking Tax

If a parking tax were to be used for transportation demand management purposes, it would be most efficient if a higher rate were charged in places where the most congestion occurred. Legally, geography could be used as a basis for classification, as long as the classification furthered either a regulatory purpose or a revenue-producing result. The market rate for parking might be used as a basis for charging differently in different areas, because the market rate would likely be correlated with congestion. However, the distinction of the parking tax from a property tax might be compromised. Other means, such as direct measures of congestion, would be preferable.

The classification could be based on duration of parking in order to target commuter parking. After all, long-term parking is used primarily by those who travel in the peak commuting hours. Therefore, charging by duration would be related to the regulatory basis of the law.

If the parking tax rate could be based on the degree to which parking were subsidized, the tax would provide a multiplier effect in transportation demand management because it would discourage the provision of free or subsidized parking. However, such a distinction might violate the uniformity provision required by the equal protection clause. Such a classification would also be difficult to administer. Despite these impediments to classifying parking tax rates according to degree of subsidization, such avenues will be thoroughly explored because of the high potential for effective transportation demand management through such a tool.

PARKING TAX EVALUATION

The Washington State Transportation Center is conducting several research projects related to transportation demand management. One of the goals of the research program is to evaluate a variety of parking policies that have potential for managing transportation demand. In the research described in the following paragraphs, the emphasis is on implementation of the commuter parking tax that is now available to local jurisdictions as a result of the new law.

To accomplish the goals of this research, several objectives have to be achieved, including the following:

- Provision of a detailed interpretation of the new legislation;
- Development of a set of alternative parking policies;
- Analysis of the administrative efficiency of each alternative;
- Estimation of potential revenue yield from each alternative involving a parking tax;
- Assessment of the attitudes of commuters, employers, and parking lot owners to each alternative; and
- Estimation of the potential vehicle trip reduction achievable through each alternative.

The research project has been organized into the following tasks.

Development of Background Information

The first step in the process will be to compile information on the effectiveness of existing parking policies. This step will be achieved through the collection and review of recent literature and communication with representatives of jurisdictions in which commercial parking taxes already exist. The research team will also contact jurisdictions that have included parking policies as part of transportation ordinances.

Detailed Interpretation of Parking Tax Legislation

Several questions concerning the intent and the legal interpretation of the legislation need to be answered. The implications of the different types of tax that can be imposed, the interpretation of several definitions provided by the law, and the responsibilities of owners and lessees when the parking space is leased need to be clarified. A law firm specializing in public finance will be included on the research team.

Alternatives Generation

The legislation gives great latitude to local jurisdictions in the way they may implement the parking tax. In addition to the options outlined previously, the project will also investigate the possibility of graduating the tax according to the degree to which parking is subsidized, the density or traffic congestion, or the availability of high-occupancy vehicle (HOV) options.

Administrative issues are also important. The parking tax may be collected through existing taxing or fee-collecting structures, or a new structure may be established. Enforcement of the parking tax may be based on extensive auditing and monitoring or on self-report, backed up by stiff fines for underreporting.

The revenues may be used for any transportation purpose. Thus, it is important to consider alternative uses as part of the alternative-generating process.

A large number of parking tax alternatives can be generated from these options. A project review team composed of representatives from local jurisdictions, transit agencies, chambers of commerce, and commercial parking businesses will review and endorse the list of options to be considered.

Criteria Development

Evaluation criteria will include revenue generation, mode shift and trip reduction, minimization of tax avoidance, minimization of spillover effects, maximization of public acceptability, and applicability to all types of jurisdictions. The project review team will approve the list of criteria used in the evaluation.

Parking Tax Administrative Analysis

The potential methods for collecting a parking tax will be evaluated through in-depth interviews with tax collection per-

sonnel from Washington State, King County, and the city of Seattle, and with experts of public finance and the legal aspects of tax collection. The results of the interviews will be used as a basis for the evaluation of several administrative alternatives for the collection of a parking tax.

Parking Inventory

A parking inventory will be required to estimate the potential yield from the parking alternatives and to evaluate the potential for mode shifts and trip reduction. The number of parking places will be estimated and classified according to such categories as commuter versus other type of parking, parking cost, extent of subsidization, geographical location, leased versus nonleased space, and ownership.

Parking will be estimated using three approaches:

1. Use of existing transportation data such as work and school trips by transportation analysis zones, average parking price, and parking inventories that have already been conducted;
2. Use of existing parking revenue records of parking places for which a fee or a sales tax is collected (state revenue records will provide information on location, ownership, and parking price for some types of parking places); and
3. Survey sampling of randomly selected geographic areas and the creation of complete inventories within those areas with the collaboration of the local jurisdictions.

Using these three estimates of the number of parking spaces and their characteristics will be determined for most urbanized areas in the Puget Sound region.

Modal Shift and Trip Reduction Analysis

Any policy that reduces parking availability or raises parking cost will reduce the demand for parking. This reduced demand may translate into shifts from SOVs to other models or to fewer person-trips. The modal shift response is the most likely for commuter trips. For this research, modal shift will be estimated from models currently under development at the Washington State Transportation Center. These models account for psychological and other noneconomic factors, as well as the traditional time and cost factors. They are also based on extensive analysis of data collected in the Puget Sound region over the past 2 years.

Analysis of Revenue Yield

An analysis will be conducted using estimates of parking spaces to project yield for each of the parking tax alternatives. In addition, the analysis will take into account the estimated

changes in travel behavior. Yield will be estimated for a wide range of taxing levels.

Public Opinion Assessment

Public opinion will be assessed by contacting commuters, employers, building operators, and parking lot owners. The acceptability of parking policy alternatives will be analyzed, and information will be gathered to predict reactions to various parking policies. Public opinion assessment will be performed through a combination of focus groups and surveys. Focus groups will be the primary method used to obtain information from employers and parking lot owners. In addition, some focus groups of commuters will be formed to develop issues for further study in surveys.

Surveys will be conducted using a random selection of Puget Sound region commuters. The surveys will probably be conducted by telephone. However, other methods of administration may be considered, depending on the complexity of the instrument and budget availability. The results of the focus groups and surveys will be analyzed to evaluate the parking policy alternatives.

Evaluation of Parking Policy Alternatives

The project review panel will conduct the final evaluation of the parking policy alternatives at the end of the project. Information will be provided to the panel as it becomes available. The list of alternatives to be analyzed and the criteria for analysis will be reviewed by the panel in an early meeting. The panel will also meet during the project to review the legal interpretation of the parking tax legislation and the analysis of administrative options.

Formal and informal meetings will be held, aided by audiovisuals, to present the outcome of the research to policy makers, representatives of local jurisdictions, and other groups interested in the issue. These individuals will be able to use the additional information when making decisions that relate the parking tax to other new transportation revenue sources. The project will also yield a better understanding of the potential for using a parking tax as a demand management tool and as a way to influence parking policy.

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