

**CLARK COUNTY
STAFF REPORT**

DEPARTMENT: Clark Regional Emergency Services Agency (CRESA)
DATE: June 10, 2014
REQUEST: Request approval of an ordinance amending Clark County Code 3.30 and an agreement with the State of Washington Department of Revenue to reflect changes in RCW 82.14B

CHECK ONE: _____ Consent _____ CAO

BACKGROUND

In 2013, the Washington State Legislature amended RCW 82.14B to address how 9-1-1 excise tax will be collected for pre-paid wireless consumers. Currently CCC 3.30 addresses how excise tax is applied and collected for switched access lines, radio access lines, and interconnected voice over internet protocol service lines. This Staff Report would bring CCC 3.30 and our agreement with the WA State Department of Revenue in alignment with amended RCW 82.14B.

COMMUNITY OUTREACH

None

BUDGET AND POLICY IMPLICATIONS

None

FISCAL IMPACTS

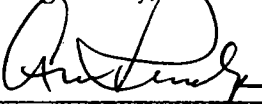
Yes (see attached form) No

ACTION REQUESTED

Approval of ordinance amending Clark County Code 3.30 related to the excise tax for switched access lines, radio access lines, lines used by pre-paid wireless consumers and interconnected voice over internet protocol service lines, to be aligned with changes that were incorporated in the Washington State Legislature's 2013 adoption of amended RCW Chapter 82.14B. Authorize the Chair to sign an updated agreement with the Washington State Department of Revenue for the collection of the enhanced 9-1-1 excise taxes.

DISTRIBUTION

Anna Pendergrass, Director CRESA
Mark McCauley, Clark County Administrator
Greg Kimsey, Clark County Auditor



Anna Pendergrass
CRESA Director

Approved: 

CLARK COUNTY
BOARD OF COMMISSIONERS

Attachments:
Draft Ordinance
WA DOR Agreement



Handwritten initials

ORDINANCE NO. 2014-07-07

An Ordinance relating to the excise tax for switched access lines, radio access lines, lines used by pre-paid wireless consumers and interconnected voice over internet protocol service lines, as described by the Legislature's 2013 amendments adopted in Chapter 82.14B RCW; and, specifically, amending CCC 3.30 to specifically establish that the excise tax on lines used by pre-paid wireless consumers is seventy cents (\$.70) per month effective

7/8/14

1 WHEREAS, CCC 3.30 provides for an excise tax for telephone access to fund enhanced
2 911 emergency communications systems; and

3 WHEREAS, the Legislature amended the applicable statutes in 2013 to include lines used
4 by prepaid wireless consumers at an excise tax rate limit of seventy cents (\$.70) per month; and

5 WHEREAS, the telephone excise tax is solely dedicated for the purpose of funding
6 enhanced 911 call center services; and

7 WHEREAS, the excise tax is a major revenue source that funds Clark Regional Emergency
8 Services Agency enhanced 911 call center services and the inclusion of lines used by pre-paid
9 wireless consumers in the excise tax structure is necessary to continue this vital public safety
10 component at current levels; and

11 WHEREAS, not enacting inclusion of lines used by pre-paid wireless consumers in excise
12 tax will negatively impact the public's ability to timely report public safety issues and receive timely
13 public safety response; now, therefore,

14 BE IT ORDERED AND RESOLVED BY THE BOARD OF COUNTY
15 COMMISSIONERS OF CLARK COUNTY, STATE OF WASHINGTON, as follows:

16 **Section 1. Amendatory.** Section 2 of Ordinance 1988-12-11, as most recently amended by
17 Ordinance 2011-05-04 and codified as 3.30.020, are each amended as follows:

18 **3.30.020 Telephone radio access and pre-paid wireless line excise tax.**

19 (1) Pursuant to Chapter 82.14B RCW, there is imposed an excise tax in the amount of
20 seventy cents (\$.70) per month on each radio access line, as defined in RCW
21 82.14B.020, for which the address of the end user set forth in the records of the radio
22 communications service company providing such radio access lines is located in
23 Clark County.

24
25 (2) ~~((Taxes imposed under this section shall be collected from the user by the radio
26 communications service providing radio access lines to end users in Clark County.
27 The tax imposed by this section shall be set forth separately on each billing
28 statement which is sent to each end user.)) Pursuant to 82.14B RCW, there is
29 imposed an excise tax in the amount of seventy cents (\$.70) per month on each line
30 used by pre-paid wireless consumers as defined in RCW 82.14B.020.~~

31
32 **Section 2. Amendatory.** Section 7 of Ordinance 2011-05-04, and codified as 3.30.070, are
33 each amended as follows:

34 **3.30.070 Effective date and notice.**

35 The effective date of the tax on switched access lines, radio access lines, lines used
36 by pre-paid wireless consumers and interconnected voice over Internet service access lines
37 herein imposed is ~~((July 25, 2011))~~ 7/8/14, and notice of the tax shall be provided by
38 Clark County to all companies providing switched access, radio access, pre-paid wireless
39 lines and interconnected voice over Internet protocol service at least sixty (60) days in
40 advance of the date on this the first payment is due.

41 The effective date of this ordinance is July 8, 2014.

42 ADOPTED this 8th day of July, 2014.

BOARD OF COUNTY COMMISSIONERS
FOR CLARK COUNTY, WASHINGTON

Attest:

Rebecca Jitz
Clerk to the Board

By Tom Mielke
Tom Mielke, Chair

Approved as to Form Only
ANTHONY F. GOLIK
Prosecuting Attorney

By _____
David Madore, Commissioner

By Taylor Hallvik
Taylor Hallvik
Deputy Prosecuting Attorney

AGREEMENT FOR STATE ADMINISTRATION OF COUNTY ENHANCED 911 EXCISE TAXES

THIS AMENDED AGREEMENT ("Agreement") is entered into by and between Clark 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 ¢) 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.
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, credits, and interest 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 counties as to which county is entitled to particular funds collected under any county's enhanced 911 excise tax, that dispute 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. 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. 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. 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

 Clark County

 Vancouver, WA, 98_____
 (360) _____

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 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 Clark County have executed this Agreement as of the day and year written below.

Date

7/8/14

Date

Janetta Taylor
Senior Assistant Director
Department of Revenue



Tom Mielke, Chair
Board of Commissioners
Clark County

Approved as to form: _____

Assistant Attorney General
State of Washington