

To: David Stockdale, City of Umatilla
Melissa Ince, City of Umatilla

Date: July 1, 2020

From: Doug Gabbard, FCS GROUP

RE: Construction Tax

BACKGROUND

Umatilla School District #6R (District) is considering the imposition of a construction tax to provide partial funding of capital improvements. This tax is governed by Oregon Revised Statutes (ORS) 320.170 to 320.195, which is reproduced in its entirety in Appendix A.

If the District imposes such a tax, the City of Umatilla (City) would likely serve as the collecting agent. The City therefore engaged FCS GROUP to calculate the potential yield of a construction tax and to provide guidance (for both the City and the District) on the implementation of the tax.

TAX YIELD

A construction tax is imposed by multiplying the eligible square footage of residential and non-residential development by a tax rate that does not exceed the maximum rate permitted by law. Therefore, the key variables in determining tax yield are the expected square footage of future development and the maximum tax rate.

DEVELOPMENT FORECAST

The City provided data on residential and non-residential development from calendar year (CY) 2014 through CY 2019. Because of the tax limit described in ORS 320.176, only the first 50,000 square feet of a non-residential development may be taxed. After adjusting for this limitation, the City's data on development can be summarized as shown in Exhibit 1:

Exhibit 1

Taxable Area by Calendar Year	Residential Square Feet	Non-Residential Square Feet
2014	30,686	960
2015	18,844	2,500
2016	32,020	50,285
2017	42,539	320
2018	123,289	25,998
2019	96,513	156,289

Source: "Square Footage" spreadsheet provided by City staff on 01/10/2020. **Note:** Non-residential square feet are adjusted to reflect the statutory limit on taxable square footage.

We converted the City's data to fiscal years (FYs) and then extrapolated the data under three scenarios that reflect the annual variability of development. These scenarios are summarized for residential development in Exhibit 2 and for non-residential development in Exhibit 3:

Exhibit 2

Residential Forecast by Year	25th Percentile (Low)	50th Percentile (Baseline)	75th Percentile (High)
2019-20	118,039	131,185	144,331
2020-21	126,177	152,469	178,761
2021-22	134,316	173,753	213,190
2022-23	142,454	195,037	247,620
2023-24	150,592	216,321	282,050

Source: FCS GROUP and previous table.

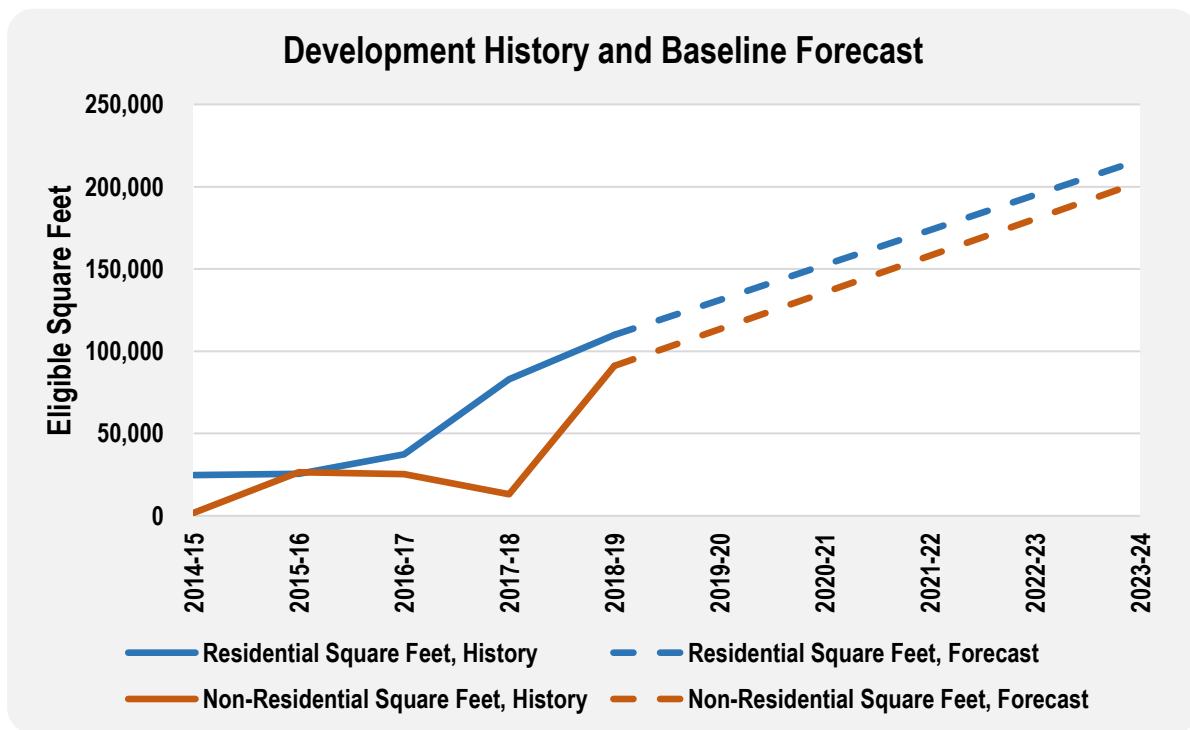
Exhibit 3

Non-Residential Forecast by Year	25th Percentile (Low)	50th Percentile (Baseline)	75th Percentile (High)
2019-20	86,406	113,497	140,588
2020-21	81,668	135,850	190,033
2021-22	76,930	158,204	239,477
2022-23	72,192	180,557	288,922
2023-24	67,455	202,910	338,366

Source: FCS GROUP and previous table.

The history and baseline forecast of eligible square footage are summarized graphically in Exhibit 4:

Exhibit 4



The revenue projections below will be based on the baseline forecasts.

Although the development history has been adjusted to reflect maximum eligible size for non-residential developments, it is not been adjusted for the development types listed in ORS 320.173 that are exempt from construction taxes.

TAX RATE

The maximum tax rate is governed by ORS 320.176 and is indexed to inflation each year by the Department of Revenue (Department). The Department’s most recent guidance is reproduced in its

entirety in Appendix B. Maximum tax rates for FY 2019-20 and FY 2020-21 are summarized in Exhibit 5:

Exhibit 5

Maximum Tax Rates	Fiscal Year	Fiscal Year
	2019-20	2020-21
Per residential square foot	\$1.35	\$1.39
Per non-residential square foot	\$0.67	\$0.69
Maximum taxable square feet per non-residential building	50,299	50,145

Source: Oregon Department of Revenue, "Indexing of School Construction Tax Limits," 07/12/2019.

Although the District is not required to impose the maximum tax rates each year, the revenue projections below will be based on the maximum rates.

REVENUE PROJECTIONS

In addition to the baseline development forecast and the maximum tax rates, a third assumption is the imposition of an administrative fee by the collecting agency, which we expect will be the City. ORS 320.179(2)(c) limits such a fee to four percent of revenues collected. While the City and District are free to negotiate any fee between zero and four percent, the revenue projections below will be based on the maximum fee.

As summarized in Exhibit 6 below, we project annual net tax revenue of \$293,442 in FY 2020-21:

Exhibit 6

Baseline Forecast at Maximum Tax Rates	Fiscal Year	Fiscal Year
	2019-20	2020-21
Taxable square feet:		
Residential	131,185	152,469
Non-residential	113,497	135,850
Tax revenue:		
Residential	\$ 177,100	\$ 211,932
Non-residential	76,043	93,737
Gross tax revenue	253,143	305,669
Less 4% administrative fee	(10,126)	(12,227)
Net tax revenue	<u>\$ 243,017</u>	<u>\$ 293,442</u>

Source: Previous tables.

After payment of the administrative fee, net tax revenue must be expended only for capital improvements as required by ORS 320.183.

IMPLEMENTATION GUIDANCE

This section provides the District with practical guidance on implementing a construction tax.

ADOPT A LONG-TERM FACILITIES PLAN

ORS 320.183 requires school districts to adopt a long-term facilities plan by resolution before imposing a construction tax. Although the statute includes a detailed definition of “capital improvement,” it does not define “long-term.” We suggest that such a plan cover at least ten years to be consistent with the requirements of ORS 195.110, even though these requirements may not be binding on the District.

IMPOSE THE CONSTRUCTION TAX

ORS 320.179(1) provides that a construction tax must be adopted by resolution of “the district board of the school district.” The adopted resolution must include the tax rates being imposed, and those rates must not exceed the maximum rates set each year by the Department.

REACH AGREEMENT WITH COLLECTING AGENCY

ORS 320.179(2) requires a school district imposing a construction tax to enter into an intergovernmental agreement with the local government that will collect the tax. Among the required provisions of the agreement is the specification of an administrative fee that will be retained by the collecting agency. This fee cannot exceed four percent of tax revenues collected. Because the administrative fee must be included in the intergovernmental agreement, it need not be included in the resolution imposing the tax.

In addition to the required provisions, we suggest that the intergovernmental agreement specify the development types that are exempt from the construction tax as listed in ORS 320.173. Such a provision may prevent the need to refund a tax payment that should never have been collected.

UPDATE TAX RATES

If the District wishes to update its tax rates to take advantage of the annual indexing of the maximum tax rates, it must adopt a new resolution imposing the tax.

SPEND THE MONEY

After payment of the administrative fee, net tax revenues must be spent only on capital improvements as defined in ORS 320.183(3). If a capital improvement was originally financed with debt, net tax revenues can be used to repay that debt. In fact, ORS 320.186 allows the District to pledge construction tax revenue for the repayment of debt.

Although the adoption of a “long-term facilities plan for making capital improvements” is required for the imposition of a construction tax, expenditures need not be made in accordance with that plan. In other words, a capital improvement need not be included in the long-term facilities plan before financing that capital improvement with construction tax revenue.

APPENDIX A: GOVERNING LAW

LOCAL CONSTRUCTION TAXES

320.170 Restriction on construction tax imposed by school district. (1) A school district, as defined in ORS 330.005, may impose a construction tax only in accordance with ORS 320.170 to 320.195.

(2) Construction taxes imposed by a school district must be collected, subject to ORS 320.179, by a local government, local service district, special government body, state agency or state official that issues a permit for structural improvements regulated by the state building code. [2007 c.829 §2; 2009 c.534 §1; 2016 c.59 §2]

320.171 Restriction on construction tax imposed by local government, local service district or special government body. (1) A local government or local service district, as defined in ORS 174.116, or a special government body, as defined in ORS 174.117, may not impose a tax on the privilege of constructing improvements to real property except as provided in ORS 320.170 to 320.195.

(2) Subsection (1) of this section does not apply to:

(a) A tax that is in effect as of May 1, 2007, or to the extension or continuation of such a tax, provided that the rate of tax does not increase from the rate in effect as of May 1, 2007;

(b) A tax on which a public hearing was held before May 1, 2007; or

(c) The amendment or increase of a tax adopted by a county for transportation purposes prior to May 1, 2007, provided that the proceeds of such a tax continue to be used for those purposes.

(3) For purposes of ORS 320.170 to 320.195, construction taxes are limited to privilege taxes imposed under ORS 320.170 to 320.195 and do not include any other financial obligations such as building permit fees, financial obligations that qualify as system development charges under ORS 223.297 to 223.314 or financial obligations imposed on the basis of factors such as income. [2007 c.829 §1; 2016 c.59 §4]

320.173 Exemptions. Construction taxes may not be imposed on the following:

(1) Private school improvements.

(2) Public improvements as defined in ORS 279A.010.

(3) Residential housing that is guaranteed to be affordable, under guidelines established by the United States Department of Housing and Urban Development, to households that earn no more than 80 percent of the median household income for the area in which the construction tax is imposed, for a period of at least 60 years following the date of construction of the residential housing.

(4) Public or private hospital improvements.

(5) Improvements to religious facilities primarily used for worship or education associated with worship.

(6) Agricultural buildings, as defined in ORS 455.315 (2)(a).

(7) Facilities that are operated by a not-for-profit corporation and that are:

(a) Long term care facilities, as defined in ORS 442.015;

(b) Residential care facilities, as defined in ORS 443.400; or

(c) Continuing care retirement communities, as defined in ORS 101.020. [2007 c.829 §3; 2009 c.534 §2]

320.176 Limitations; rates; adjustment by Department of Revenue. (1) Construction taxes imposed by a school district pursuant to ORS 320.170 may be imposed only on improvements to real property that result in a new structure or additional square footage in an existing structure and may not exceed:

(a) \$1 per square foot on structures or portions of structures intended for residential use, including but not limited to single-unit or multiple-unit housing; and

(b) \$0.50 per square foot on structures or portions of structures intended for nonresidential use, not including multiple-unit housing of any kind.

(2) In addition to the limitations under subsection (1) of this section, a construction tax imposed on structures intended for nonresidential use may not exceed \$25,000 per building permit or \$25,000 per structure, whichever is less.

(3)(a) For years beginning on or after June 30, 2009, the limitations under subsections (1) and (2) of this section shall be adjusted for changes in construction costs by multiplying the limitations set forth in subsections (1) and (2) of this section by the ratio of the averaged monthly construction cost index for the 12-month period ending June 30 of the preceding calendar year over the averaged monthly construction cost index for the 12-month period ending June 30, 2008.

(b) The Department of Revenue shall determine the adjusted limitations under this section and shall report those limitations to entities imposing construction taxes. The department shall round the adjusted limitation under subsection (2) of this section to the nearest multiple of \$100.

(c) As used in this subsection, “construction cost index” means the Engineering News-Record Construction Cost Index, or a similar nationally recognized index of construction costs as identified by the department by rule. [2007 c.829 §4; 2016 c.59 §5]

320.179 School district resolutions; collections; requirements. (1) A school district imposing a construction tax shall impose the tax by a resolution adopted by the district board of the school district. The resolution shall state the rates of tax, subject to ORS 320.176.

(2) Prior to collecting a construction tax, a school district shall enter into an intergovernmental agreement with each local government, local service district, special government body, state agency or state official collecting the tax that includes:

(a) Collection duties and responsibilities;

(b) The specific school district accounts into which construction tax revenues are to be deposited and the frequency of such deposits; and

(c) The amount of the administrative fee that the entity or official collecting the tax may use to recoup expenses incurred in collecting the construction tax, either through retention or reimbursement. An administrative fee under this paragraph may not exceed four percent of tax revenues. [2007 c.829 §5; 2009 c.534 §§3,4]

320.183 Long-term facilities plan for capital improvements. (1) After deducting the costs of administering a construction tax and payment of refunds of such taxes, a school district shall use net revenues only for capital improvements.

(2) A construction tax may not be imposed under ORS 320.170 to 320.195 unless the school district imposing the tax develops a long-term facilities plan for making capital improvements. The plan shall be adopted by resolution of the district board of the school district.

(3) As used in this section, “capital improvements”:

(a) Means:

(A) The acquisition of land;

(B) The construction, reconstruction or improvement of school facilities;

(C) The acquisition or installation of equipment, furnishings or other tangible property;

(D) The expenditure of funds for architectural, engineering, legal or similar costs related to capital improvements and any other expenditures for assets that have a useful life of more than one year; or

(E) The payment of obligations and related costs of issuance that are issued to finance or refinance capital improvements.

(b) Does not include operating costs or costs of routine maintenance. [2007 c.829 §6]

320.186 Payment of obligations. A school district may pledge construction taxes imposed pursuant to ORS 320.170 to the payment of obligations issued to finance or refinance capital improvements as defined in ORS 320.183. [2007 c.829 §7; 2016 c.59 §6]

320.189 Payment of taxes. Construction taxes must be paid by the person undertaking the construction at the time that a permit authorizing the construction or the expansion of square footage of a facility or building is issued. [2007 c.829 §8; 2009 c.534 §5]

320.192 City or county ordinance or resolution to impose tax; requirements; payment of taxes. (1) The governing body of a city or county may impose a construction tax by adoption of an ordinance or resolution that conforms to the requirements of this section and ORS 320.195.

(2)(a) A tax may be imposed on improvements to residential real property that result in a new residential structure or additional square footage in an existing residential structure, including remodeling that adds living space.

(b) An ordinance or resolution imposing the tax described in paragraph (a) of this subsection must state the rate of the tax. The tax may not exceed one percent of the permit valuation for residential construction permits issued by the city or county either directly or through the Building Codes Division of the Department of Consumer and Business Services.

(3)(a) A tax may be imposed on improvements to commercial and industrial real property, including the commercial and industrial portions of mixed-use property, that result in a new structure or additional square footage in an existing structure, including remodeling that adds living space.

(b) An ordinance or resolution imposing the tax described in paragraph (a) of this subsection must state the rate and base of the tax.

(4) Taxes imposed pursuant to this section shall be paid at the time specified in ORS 320.189 to the city or county that imposed the tax.

(5)(a) This section and ORS 320.195 do not apply to a tax described in ORS 320.171 (2).

(b) Conformity of a tax imposed pursuant to this section by a city or county to the requirements of this section and ORS 320.195 shall be determined without regard to any tax described in ORS 320.171 (2) that is imposed by the city or county. [2016 c.59 §8]

320.195 Deposit of revenues; required uses. (1) As soon as practicable after the end of each fiscal quarter, a city or county that imposes a construction tax pursuant to ORS 320.192 shall deposit the construction tax revenues collected in the fiscal quarter just ended in the general fund of the city or county.

(2) Of the revenues deposited pursuant to subsection (1) of this section, the city or county may retain an amount not to exceed four percent as an administrative fee to recoup the expenses of the city or county incurred in complying with this section.

(3) After deducting the administrative fee authorized under subsection (2) of this section and paying any refunds, the city or county shall use the remaining revenues received under ORS 320.192 (2) as follows:

(a) Fifty percent to fund developer incentives allowed or offered pursuant to ORS 197.309 (5)(c) and (d) and (7);

(b) Fifteen percent to be distributed to the Housing and Community Services Department to fund home ownership programs that provide down payment assistance; and

(c) Thirty-five percent for programs and incentives of the city or county related to affordable housing as defined by the city or county, respectively, for purposes of this section and ORS 320.192.

(4) After deducting the administrative fee authorized under subsection (2) of this section and paying any refunds, the city or county shall use 50 percent of the remaining revenues received under ORS 320.192 (3) to fund programs of the city or county related to housing. [2016 c.59 §9]

APPENDIX B: TAX LIMITS



Oregon

Kate Brown, Governor

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Issue: Indexing of School Construction Tax Limits
Statute Reference: ORS 320.170
Last Updated: July 12, 2019

Background:

Passed in 2007, SB 1036 allowed school districts to impose a tax on new construction measured by the square footage of improvements (affordable housing, public buildings, agricultural buildings, hospitals, private schools, and religious facilities are exempt). SB 1036 defined and required revenues to be used for capital improvements. Construction taxes imposed by a school district must be collected by a local government, local service district, special government body, state agency or state official that issues a permit for structural improvements regulated by the state building code. An intergovernmental agreement with local governments collecting the tax is required and collection expenses are limited to 4 percent of tax revenue. DCBS is allowed to establish an administration fee of .25 percent of tax revenue. School districts with construction tax revenue are required to develop long-term facility plans. Construction taxes may be used for repayment of capital improvement debt.

Tax Limit Calculations:

SB 1036 set tax rate limits of \$1 per square foot for residential use and \$0.50 for nonresidential use, along with a \$25,000 tax limit on nonresidential properties. Beginning in 2009, tax rates were indexed to inflation using the Engineering News-Record Construction Cost Index. As prescribed in statute, DOR is responsible for updating tax rate limits and notifying affected districts. To notify affected districts, DOR partners with the Department of Education, which receives updated limit calculations from DOR and notifies the affected districts.

Tax rate limits by fiscal year:

Fiscal Year	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Residential*	1.17	1.20	1.23	1.26	1.30	1.35	1.39
Non-Residential*	0.58	0.60	0.61	0.63	0.65	0.67	0.69
Non-Residential Max	29,200	29,900	30,700	31,400	32,600	33,700	34,600

* Dollars per square foot

School Construction Tax FY 2020 Release
 July 12, 2019