

Section 1 - What's in this Chapter

Updated 2011

This chapter covers what a lodging tax board is, how one is established, and some of the differences between county-wide and city-wide boards.

Section 2 - What a Lodging Tax Board Is

Updated 2011

A lodging tax board is the group of individuals set up to receive and disburse lodging tax revenue. For a countywide tax, this is done through a joint powers board. A city will normally set up some sort of governing body – a board, a committee, or in some cases a non-profit corporation – to receive and disburse the revenues from a city-wide lodging tax. Regardless of how they are formed, all lodging tax boards operate within the boundaries set forth in their governing documents.

Section 3 - Governing Documents

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The documents that govern your board are all of equal importance. All or parts of the following documents will apply to your lodging tax board. To collect your board's governing documents, start with Wyoming Statute 39-15, which applies to all lodging tax boards. Next determine which sections of Department of Revenue and Department of Audit rules apply to your board. Add to this a copy of the agreement or ordinance authorizing your board and your bylaws. You may want to seek appropriate legal counsel to help you determine which provisions of the statutes and rules apply to your board and what additional requirements you may have to meet.

Wyoming Statute

The first and most general document, but also most important, is the authorizing statute, Wyoming Statute 39-15 Articles 1 and 2. This is where you'll find the basic guidelines that govern imposition and collection of the lodging tax (see Chapter 1). This statute applies to **all** lodging tax boards and can only be changed through the legislative process. Other statutes will also apply depending on whether you have a county- or city-wide board.

Rules and Agreements

The second group consists of rules and agreements that help carry out the intent of the statute. In this group you have rules promulgated by different departments within the state, such as the Department of Revenue and the Department of Audit. Rules made by the various departments can be changed through the rule making process that, while easier than changing statute, still requires significant work and public input. These rules may or may not apply to your board, depending on its structure.

Within your community, the governing documents are the joint powers board agreement for a countywide tax or the ordinance creating the governing body for a city-wide tax. Joint powers board agreements are guided by the Joint Powers Act, Wyoming Statute 16-1 Article 1. Cities have more choice of operational methods but must still carry out the intent of the authorizing statute. Changes to these agreements require approval from the governing bodies of the counties

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and cities making up the agreement. These agreements apply to your local lodging tax board only.

Bylaws and Policy Guides

Finally, day-to-day operations of lodging tax boards are governed by the most specific documents, the board's bylaws. Bylaws can typically be changed by vote of the lodging tax board. Depending on your board, you may also have a set of less formal procedures in the form of a policy guide. Your bylaws and policy guides apply only to your lodging tax board.

Wyoming Statute 16-3 the Administrative Procedures Act may apply to joint powers lodging tax boards. Whether or not the statute is legally binding, it still provides guidelines for the rule making process. This Act can be accessed from the State's website at <http://legisweb.state.wy.us> or at [Administrative Procedures Act](#)

Section 4 - County and City Lodging Tax Boards

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As mentioned earlier, the primary difference between county and city boards are the controlling agreements. The Wyoming Joint Powers Act gives the county commissioners and cities some flexibility in how they set up the board. Cities have more flexibility and can choose from a wider range of operational methods, but must still carry out the intent of the authorizing statute. In both cases, lodging tax revenue must be used to promote travel and tourism but can't be used for capital construction or improvements.

Countywide Tax: Joint Powers Board

Joint powers boards were established by law some years ago as a means of administering countywide projects. There are many kinds of joint powers boards, including those set up for the lodging tax. A joint powers agreement is drawn up between the cities and the county commissioners specifying purposes, duration, methods of operation, termination, and any other appropriate provisions. This agreement becomes the basis for subsequent operation of the lodging tax joint powers board.

- The joint powers board must have at least five members. W.S. 16-1-106(a)
- All members must be qualified electors of the county where the board operates. W.S. 16-1-106(a) A qualified elector is a bona fide resident of Wyoming. Residence is defined as the place where a person has a current habitation and to which, whenever he is absent, he has the intention of returning. A person does not gain residence of a county if he enters it without the intent of making it his current actual residence. W.S. 22-1-102(a) (xxvi) and (xxx) (A) and (D).
- The board must include at least one representative appointed by each county or city participating in the joint powers board agreement. W.S. 39-15-211(a)(ii)(B)(I)
- A majority of the board membership must come from the travel and tourism industry. W.S. 39-15-211(a)(ii)(B)(I)
- Initial appointments are by mutual agreement with staggered one, two, and three year terms. W.S. 16-1-106(a)

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- Subsequent appointments are for three years (still keeping the staggered terms). W.S. 16-1-106(a)
- Board members may be removed by the governing bodies of the county or city which appointed them. W.S. 16-1-106(a)
- Joint powers boards must have a chairman, vice-chairman, secretary and treasurer. W.S. 16-1-106(b)
- A joint powers board can sue and be sued and has perpetual existence unless otherwise specified in the joint powers board agreement. W.S. 16-1-106(b)
- Individual members of a joint powers board are not personally liable for any actions or procedures of the board. W.S. 16-1-106(b)
- Members of a joint powers board can't receive any compensation other than reimbursement for travel and per diem expenses as provided to state employees. W.S. 16-1-106(b)
- Meetings must be held at least once every three months, at the call of the chairman, or within five days after an oral or written request of a majority of board members. W.S. 16-1-106(c)
- A joint powers board may employ technical, legal, administrative, and clerical staff and can engage the services of research and consulting agencies. W.S. 16-1-106(d)
- Joint powers boards are subject to the Wyoming Statute 16-4 101 through 125, the Uniform Municipal Fiscal Procedures Act. W.S. 39-15-211(a)(ii)(B)(I)

Once created, the board becomes the legal entity administering the lodging tax revenue. In some cases, boards contract with outside entities that oversee the expenditures. In other cases, the board sets up an office and meets regularly to administer a marketing plan. Care should be taken to make sure all operations are appropriately managed and accounted for.

Citywide Tax: Advisory and Promotion Boards, etc.

City lodging tax revenues are administered by the city and not by a joint powers board. Most cities set up an advisory board of interested parties or in some cases, establish a non-profit corporation to administer the lodging tax revenue. Without a guiding statute, there is much more variety in city-wide lodging tax boards than in county-wide boards. If you are a member of a city-wide board, you will need to check your board's authorizing ordinance and bylaws for specific guidelines. These documents must still follow the intent of the statute authorizing the lodging tax. Expenditures must be used to promote travel and tourism and a majority of the board must represent the travel and tourism industry. If a city-wide lodging tax board hires staff, care should be taken to make sure all operations are appropriately managed and accounted for.

Section 5 - Lodging Tax Board Members

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As mentioned earlier, lodging tax joint powers boards must have at least five members. City ordinances control the number of board members for a city-wide lodging tax board.

Member Requirements

While the only statutory requirements are that board members must be qualified electors of the county or city where the board operates and that a majority of the board must be from the travel

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and tourism industry, here are a few qualifications that boards or appointing bodies may want to consider.

- Since this is a volunteer board, board members must be willing to commit the time and energy needed to attend meetings and work through decisions.
- Having members from all sectors of the community can be helpful. Tourists don't just spend money on lodging, and different perspectives may help you better define your potential customer.
- Board members from the travel and tourism industry, especially those in sales and marketing, can provide valuable suggestions since they are already marketing to the very customers your board needs to reach.
- As much as possible, boards should have members with expertise in:
 - Sales and marketing
 - Media relations
 - Accounting and fiscal procedures
 - Leadership

Member Responsibilities

As a lodging tax board member, you are responsible for handling public funds. You have a fiduciary duty to expend those funds to the best of your ability in order to promote travel and tourism in your community. While Wyoming Statute 1-23-107 and 1-39-1 limit individual board member liability, care should be taken to make sure all operations are appropriately managed and accounted for. Chapter 6 on fiscal operations provides guidance in this area.

Wyoming Statute 9-13 Government Ethics may apply to lodging tax boards. Whether or not the statute is legally binding, it still provides helpful guidelines for avoiding accusations of misconduct. A summary of the statute is included here for your reference and a more complete copy can be found in Appendix 304.

- You may not use the title and prestige of your public position to solicit a gift valued at more than \$250. W.S. 9-13-103
- You may not advocate or cause the employment, appointment, promotion, transfer or advancement of a family member to an office or position of the state, a county, municipality or a school district. W.S. 9-13-104(a)
- You may not use public funds, time, personnel, facilities or equipment for your private benefit or that of another. W.S. 9-13-105(a)
- You may not make an official decision or vote on an official decision if you have a personal interest (one that is direct and immediate as opposed to speculative and remote) in the matter. Recognize the importance of your right to represent your constituency and abstain from voting only in clear cases of a personal interest. If you abstain, it should be recorded in the official records. W.S. 9-13-106(a,b)
- You may not vote to give money or any direct financial benefit to yourself. W.S. 9-13-106(a)
- You may want to use the sample conflict of interest statement given in Appendix 315.

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Additional information on appropriate conduct can be found in Appendix 303 which contains a summary of Wyoming Statute 6-5 dealing with offenses by public officials.

Oath of Office

Board members are not required by statute to take an oath of office. However, some of the agreements authorizing lodging tax boards do require an oath of office. The county clerk administers the typical oath and is the one used by elected officials as found in the Wyoming Constitution 6-20. “I do solemnly swear or affirm that I will support, obey and defend the constitution of the United States, and the constitution of the state of Wyoming, that I have not, knowingly, violated any law related to my election or appointment, or caused it to be done by others; and that I will discharge the duties of my office with fidelity.”

Section 6 - Resource Material

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This manual should be used as a guide only as it is based on changing legal requirements. We suggest you consult appropriate professional counsel if you have specific questions. The following material is included in the appendix section of this manual for general reference. You can also check the State’s websites at <http://legisweb.state.wy.us> for current statutes and <http://soswy.state.wy.us> for current rules.

- Appendix 301 - Wyoming Statute 1-23-107: individual liability for board actions
- Appendix 302 - Wyoming Statute 1-39-1: legal claims against governmental entities
- Appendix 303 - Wyoming Statute 6-5: Offenses by Public Officials
- Appendix 304 - Wyoming Statute 9-13-1: Ethics and Disclosure Act
- Appendix 305 - Wyoming Statute 16-1-1: Wyoming Joint Powers Act
- Appendix 306 - Wyoming Statute 16-3-1: Administrative Procedures Act
- Appendix 102 - Wyoming Statute 39-15: Sales and Lodging Tax
- Appendix 307 - Bylaws: Albany County
- Appendix 308 - Bylaws: Fremont County
- Appendix 309 - Bylaws: Laramie County
- Appendix 310 - Bylaws: Natrona County
- Appendix 311 - Bylaws: Evanston
- Appendix 312 - Bylaws: Gillette
- Appendix 313 - Bylaws: Sheridan
- Appendix 314 - Sample Joint Powers Board Agreement
- Appendix 315 - Sample Conflict of Interest Statement