



OCTOBER 17, 2022
RECREATION ARTS AND PARKS TAX ADVISORY COMMITTEE
REGULAR MEETING - 5:30 P.M.

MASKS ARE HIGHLY RECOMMENDED

**City Council Chambers
217 East Center Street
Moab, Utah 84532**

1. Call To Order
2. Welcome And Introduction
3. Background And Purpose Of The Recreation Arts And Parks Tax

Documents:

[RAP TAX BACKGROUND AGENDA SUMMARY.PDF](#)
[3.19.010 MOAB CODE.PDF](#)
[A REVIEW OF THE USE AND ACCOUNTABILITY OF RAP TAX FUNDS
STATEWIDE.PDF](#)
[C59-12-UTAH CODE RAP.PDF](#)

4. Review Of RAP TAC Role And Timeline

Documents:

[RAP TAC ROLE AND TIMELINE AGENDA SUMMARY.PDF](#)

5. Discussion Of RAP Tax Project Guidelines And Application Process

Documents:

[RAP TAX EXAMPLES.PDF](#)
[RAP TAX PROJECT GUIDELINES AND APPLICATION PROCESS AGENDA
SUMMARY.PDF](#)

6. Determine Next Meeting Dates
7. Adjournment

Special Accommodations:

In compliance with the Americans with Disabilities Act, individuals needing special accommodations during this meeting should notify the Recorder's Office at 217 East Center Street, Moab, Utah 84532; or phone (435) 259-5121 at least three (3) working days prior to the meeting.

Check our website for updates at: www.moabcity.org

RAP TAC Agenda Item

Meeting Date: October 17, 2022

Title: Background and purpose of the RAP Tax

Presenter: Annie McVay, Parks, Recreation and Trails Director

Attachment(s):

- a. Moab Rap Tax Code
- b. Utah RAP Tax Code
- c. A Review of the Use and Accountability of RAP Tax Funds Statewide

On Nov. 3, 2020, City of Moab voters approved Proposition 8, the Recreation, Arts & Parks Tax (RAP). The RAP Tax adds 0.1% to the sales tax, which equals 1 penny for every \$10 spent.

The City has discretion on how decisions are made for projects funded through the RAP Tax, it can be a Council decision or create a committee that considers qualified recreation, arts and parks projects/programs and makes recommendations to the City Council. Moab City Council members and the community have expressed support for the creation of a committee. The Recreation, Arts and Parks Tax Advisory Committee was codified on July 14, 2022 and members appointed on October 27, 2022.

The City also has discretion on how the funds are allocated. In researching other entities there is not one model that is most common, each community structure reflects their needs. City Council voted to allocate 80% of this year's RAP Tax revenue for internal City projects and 20% for qualifying non-profit organizations. This year's revenue is currently at \$465,458.14 which allows for \$93,091.63 for the grant cycle.

3.19.010 Recreation, arts and parks tax.

The City Council for the City of Moab hereby imposes and levies a RAP tax in accordance with Utah Code Annotated Section [59-12-1401](#) et seq.

The RAP tax hereby imposed and levied shall be collected, a local sales and use tax of one-tenth of one percent of the sales price upon all retail sales transactions, including personal property, services, and meals, made within the City of Moab, except for the exempt transactions listed in Utah Code Annotated Section [59-12-104](#).

All retail sales shall be presumed to have been consummated at the place of business delivered by the retailer or their agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. In the event a retailer has no permanent place of business, the place at which the retail sales are consummated shall be as determined under the rules and regulations adopted by the Utah State Tax Commission.

The tax revenues earned by the RAP tax shall be used to fund City or nonprofit projects within the City for recreational, cultural, and/or botanical facilities, including, but not limited to, capital projects, programs, and ongoing operation expenses of recreational and cultural facilities as such terms are defined in Utah Code Annotated Section [59-12-1401](#) et seq.

The effective date of the Moab City RAP tax shall be April 1, 2021. (Ord. 20-16 § 1, 2020)

The Moab Municipal Code is current through Ordinance 22-15, passed September 13, 2022.

Disclaimer: The City Recorder's Office has the official version of the Moab Municipal Code. Users should contact the City Recorder's Office for ordinances passed subsequent to the ordinance cited above.

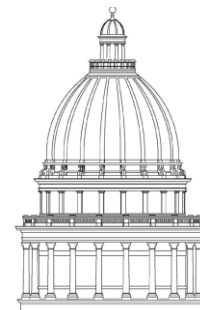
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LEGISLATIVE AUDITOR GENERAL
State of Utah

REPORT NUMBER 2010-07
July 2010



A Review of the Use and Accountability of RAP Tax Funds Statewide

Governing statute for Utah's Zoo, Arts, Parks, and Recreation tax (referred to as the RAP tax in this report) contains elements that are inconsistent and unclear. The Legislature should address these code concerns through a review and clarification of both the county and municipal RAP portions of the *Utah Code*. Some RAP-funded programs and projects appeared to be inconsistent with current statutory requirements; however, the majority seemed reasonable. Finally, the accounting transparency of RAP funding varies among and within county and municipal accounting systems. Nonetheless, no cases were found for which RAP revenues and qualifying expenditures could not be accounted for somehow.

In 1993, the first bill was passed authorizing county option funding for botanical, cultural, and zoological organizations through a slight increase (1/10 of 1 percent) in the county sales and use tax. Because the county option tax failed to pass in both Salt Lake and Iron Counties, the county option funding was statutorily amended in 1996 to include public recreation facilities; as a result, in November 1996 Salt Lake County voters approved the first RAP tax. Finally, in 2001, this optional funding was expanded to allow a city or town to enact the tax (if passed by the voters) as long as the county was not already imposing the tax.

RAP-funded programs and projects generally appear to be in compliance with *Utah Code*.

Five counties and 16 municipalities collected a RAP tax in fiscal year 2009.

Since the creation and expansion of the county option tax, several counties and municipalities have passed the tax which goes by a variety of acronyms (e.g., ZAP, RAP, PAR, RAMP, RAPZ). According to Utah Tax Commission records, five counties and 16 municipalities collected a RAP tax in fiscal year 2009. Figure 1 identifies each county and municipality collecting this tax as well as the amount collected.

Figure 1 Counties and Municipalities Collecting a RAP Tax in Fiscal Year 2009. Salt Lake County collected the most RAP tax while Duchesne City collected the least.

Counties	RAP Tax Collected in FY09	Municipalities*	RAP Tax Collected in FY09
Salt Lake	\$ 17,462,945	Orem	\$ 1,633,592
Weber	2,793,541	Cedar City	438,635
Uintah	1,485,508	Bountiful	387,874
Cache	1,142,702	Tooele	315,117
Summit	1,080,230	Centerville	271,324
		Price	266,404
		Roosevelt	197,180
		Salina	43,079
		Blanding	33,032
		West Bountiful	13,925
		Brian Head	13,718
		Woods Cross	12,444
		Aurora **	7,937
		Redmond **	4,834
		Cedar Hills	2,742
		Duchesne	1,185

*Monticello began collecting a RAP tax in August 2009 and was not included in our survey.

**Aurora and Redmond remit their RAP tax collections to Salina.

Utah Code allows municipalities and counties flexibility to customize their RAP programs to support local needs.

Utah Code permits counties and municipalities to use their RAP funds for a variety of activities. This affords municipalities and counties flexibility in customizing their RAP programs to support local needs. Counties and municipalities may divide their RAP tax spending, in various proportions, across recreation and arts. (Salt Lake County is an exception. **Utah Code** specifies how its RAP funds will be apportioned and allocated.)

Counties and municipalities vary in their administration of RAP funds. Some counties and municipalities allocate RAP money to secondary recipients through competitive grants. Salt Lake County,

Weber County, Orem, and Cedar City award some, if not all, of their RAP money through competitive grants. The grant process usually involves selection by an advisory committee with final grant approval given by the county commission or city council. Other counties and municipalities use their RAP funds for very specific purposes. For example, Uintah County uses its RAP money exclusively on capital improvements, operations, and maintenance of its Western Park facility; Blanding uses its RAP money exclusively on the construction of its recreation facility, the San Juan Wellness Center, which includes a new pool and recreation court space.

While there are differences among the counties and municipalities as to the administration of RAP money, it was not the objective of this review to analyze the efficiency and effectiveness of the various systems. Instead, this review had two objectives:

- Determine if RAP tax funds are spent on appropriate programs or projects.
- Determine if RAP tax receipts and expenditures could be clearly tracked through an entity's accounting system.

To answer these questions, general program information was gathered from each county and municipality collecting a RAP tax. In addition, limited test work was done in each county and municipality to review funded programs and accounting transparency.

In conducting this review, we determined that *Utah Code* provided criteria against which the various RAP programs were assessed. However, we found *Utah Code* problematic in some areas.

Relevant Code Contains Inconsistent And Unclear Elements

Inconsistent elements exist between the county and municipal RAP sections of *Utah Code*, and unclear elements exist in the county RAP section of *Utah Code*. In addition, the county and municipal RAP sections of *Utah Code* are silent on the issue of fund supplanting, making it unclear whether supplanting is acceptable to the Legislature. We recommend the Legislature review and clarify both the county and

Some counties and municipalities allocate RAP money to secondary recipients through competitive grants.

General program information and limited test work was gathered from each county and municipality collecting a RAP tax.

municipal sections of the *Utah Code* to ensure legislative intent is clearly stated.

County and Municipal RAP Sections of *Utah Code* Differ

Differences between county and municipal RAP sections of statute have caused confusion for two municipalities receiving the tax.

Differences between county and municipal RAP sections of the statute have caused confusion. These differences include allowances for recreational operating expenses and reauthorization dates for the RAP tax. In one case, differences have caused confusion for two municipalities receiving the tax. Certainly these code sections can differ, if that is the Legislature's intent. If not, then the code sections should be modified.

Municipal code restricts recreational facilities from using RAP funds for operating expenditures.

Recreational Operating Expenses Are Allowable for Counties, But Not Municipalities. *Utah Code* 59-12-703(3) specifies how counties may spend their RAP recreational money. Counties are authorized to spend RAP funding on both recreational facilities (capital expenditures) and ongoing operating expenses of these facilities. The municipal RAP code, *Utah Code* 59-12-1402(3), is more restrictive. Only recreational facility capital expenditures are authorized. No mention is made of recreational facilities' operating expenses.

Price was surprised to discover that recreational operating expenses were not allowable RAP expenditures. When Price passed its RAP tax in 2006, the primary purpose of the tax was to generate revenues to mitigate the increasing costs of operating the swimming pool, parks, and other recreational facilities. After the RAP tax was passed, Price's finance director learned from another city that Price could not use RAP money for recreational operating expenses as intended. To date, Price has followed the statute prohibiting use for operating expenses. Despite the expensive and ongoing costs of operating the swimming pool and other recreational facilities, Price has dedicated their RAP funds to two capital improvement projects totaling \$130,000.

Salina was also unaware that recreational operating expenses were not permissible. Unlike Price, Salina, which also utilizes Aurora's and Redmond's RAP funds, has used its RAP money on recreational operating expenses since fiscal year 2007.

If the Legislature did not intend to exclude municipalities from using RAP funds to cover recreational operational expenses, then a code change is necessary.

Counties' RAP Reauthorization Period Is Longer than Municipalities'. According to *Utah Code* 59-12-703(4)(a)(ii), a county RAP tax is levied for a period of 10 years and may be reauthorized at the end of the 10-year period. Municipalities, on the other hand, are governed by *Utah Code* 59-12-1402(4)(a)(ii), which allows a municipality to levy the RAP tax for a period of 8 years, after which the municipal RAP tax may be reauthorized.

The RAP tax may be reauthorized at the end of a 10-year period for counties and an 8-year period for municipalities.

With a few exceptions (Roosevelt, Brian Head, Blanding, and Duchesne), the majority of counties and municipalities were aware of their proper reauthorization time period. Nonetheless, if the Legislature did not intend different reauthorization periods, then the statute needs to be changed.

Some County RAP Sections Are Unclear

The county RAP section of *Utah Code* is unclear in three areas. First, cultural facilities embedded within the definition of recreational facilities does not promote clarity concerning appropriate use of RAP funds. Second, how broadly the term *art* should be interpreted when assessing acceptable RAP projects is unclear. Third, it appears the code tries to exclude higher education institutions from qualifying for RAP funding as a cultural organization; however, the effectiveness of this exclusion is unclear.

Defining Cultural Facilities as Recreational Facilities Does Not Promote Clarity. *Utah Code* does not clearly state that RAP money can be used for cultural facility capital expenditures. If the Legislature intends for RAP funding to be used on such expenditures, then we believe *Utah Code* should be amended to clearly state that fact.

In outlining how county RAP money can be used, *Utah Code* 59-12-703(3) states the following:

(3) The monies generated from any tax collected under Subsection (2) shall be used for funding:

- (a) recreational and zoological facilities . . . ; and
- (b) ongoing operating expenses of:
 - (i) recreational facilities . . . ; and
 - (ii) botanical, cultural, and zoological organizations. . . .

In outlining how municipal RAP money can be used, *Utah Code* 59-12-1402(3) states:

- (3) The monies generated from any tax collected under Subsection (2) shall be used for funding:
 - (a) recreational and zoological facilities . . . ; and
 - (b) ongoing operating expenses of botanical, cultural, and zoological organizations. . . .

If it is the Legislature's intent that expenditures on cultural facilities are acceptable, we believe that this intent should be made clearer.

It is not obvious in either *Utah Code* 59-12-703(3) or 59-12-1402(3) that cultural facility capital expenditures are allowable RAP expenditures. In fact, cultural facility capital expenditures are allowable RAP expenditures because cultural facilities are embedded in the recreational facility definition. *Utah Code* 59-12-702(6) states a "recreational facility means any publicly owned or operated park, campground, marina, dock, golf course, playground, athletic field, gymnasium, swimming pool, trail system, cultural facility or other facility used for recreational purposes." In our opinion, if it is the Legislature's intent that expenditures on cultural facilities are acceptable, we believe that this intent should be made clearer in the code.

Meaning of the Term *Art* Is Unclear. When defining acceptable RAP program uses, the statute specifies six cultural disciplines: history, natural history, art, music, theater, and dance. As can be seen, the term *art* rather than *arts* is used in the list. The term *art* tends to have a meaning focusing on visual mediums, such as painting, drawing, and sculpture, while the term *arts* encompasses many disciplines, such as music, theater, dance, and art, which the Legislature specifically listed.

While storytelling, literature, and media can be seen as members of the cultural arts, they are not specifically designated by the Legislature as acceptable disciplines.

Salt Lake County and Orem have interpreted the term *art* in a broad fashion. Consequently, disciplines such as storytelling, literature, and media have received RAP funding. While we can certainly see these disciplines as members of the cultural arts, they are not specifically designated by the Legislature as acceptable disciplines.

If it is the intent of the Legislature to fund such disciplines, then perhaps the term *arts* should be used instead of a specific list of disciplines.

Effectiveness of Excluding Higher Education Institutions as Cultural Organizations Is Unclear. According to *Utah Code* 59-12-702(4)(b)(iii), a cultural organization does not include higher education institutions whose annual revenues are directly derived more than 50 percent from state funds. Based on our analysis, it appears the criterion is ineffective in excluding higher education institutions as cultural organizations. We reviewed the revenues (operating, non-operating, and other) stated in the fiscal year 2009 audited financials of four higher education institutions—the University of Utah, Utah State University, Weber State University, and Utah Valley University. In all four cases, state revenue was less than 50 percent of total revenue.

It appears the *Utah Code* criterion is ineffective in excluding higher education institutions as cultural organizations.

If a new, more-exclusive criterion is developed, the Legislature may want to specify how deeply within a higher education institution the criterion should apply. For example, the following are some of the programs affiliated with the University of Utah that receive RAP money from Salt Lake County:

- Kingsbury Hall Presents
- Pioneer Theatre Company
- Tanner Dance Program
- Utah Museum of Fine Arts
- Utah Museum of Natural History
- Guest Writers Series Outreach Program

Some of these programs may be relatively independent from the university while others may not be.

County and Municipal RAP Sections of *Utah Code* Are Silent On Fund Supplanting

The issue of fund supplanting is not addressed in either the county or municipal RAP portions of *Utah Code*. Fund supplanting would involve replacing a funding source with RAP money, which then allows the former source to fund another program. When funds are supplanted, the status quo is generally maintained; new or enhanced programs are not added.

When funds are supplanted, generally new or enhanced programs are not added.

Identifying fund supplanting is a time-consuming process and was outside the scope of this review. However, Cache County reported concern about supplanting especially with the RAP recreational money Cache proportionally allocates to municipalities based on population size. The fear was that municipalities were supplanting their old recreational budgets with RAP money and then using the old recreational budgets for other purposes (e.g., street repair). Cache County now requires that municipalities tell the county how the allocation will be spent before the money is provided. If fund supplanting violates legislative intent for the use of RAP revenue, we believe the Legislature should say so in *Utah Code*.

Despite the uncertainties in *Utah Code*, we found most of the RAP-funded programs to be within statutory guidelines. For those programs that were questionable, the questions often involved inconsistent or unclear statutory language.

Some Recipients and Projects Seem Inconsistent With Statute

Given current statutory language, some RAP recipients and projects are questionable. A majority, however, appear to comply with *Utah Code* funding requirements.

To enable an analysis of statutory compliance, we selected 89 RAP-funded projects.

To enable an analysis of statutory compliance, we selected 89 RAP projects funded in either 2008 or 2009 for review. These 89 projects were drawn from each municipality and county receiving RAP funding. We compared the funded recipients and projects to funding criteria contained in *Utah Code*.

Utah Code broadly divides RAP funding criteria between two types of funding:

- RAP recreational funding is provided for publicly owned or operated recreational facilities.
 - **Funding Allowances.** Recreational facilities include parks, campgrounds, marinas, docks, golf courses, playgrounds, athletic fields, gymnasiums, swimming pools, trail systems, cultural facilities, or other recreational facilities.

- **Funding Restrictions.** Municipalities may only use RAP recreational funding for capital expenditures while counties may fund both operational expenses and capital expenditures.
- RAP cultural funding is provided to botanical/cultural organizations, defined as any cultural council, private nonprofit, or institution having as its primary purpose the advancement and preservation of botanical or cultural activities.
 - **Funding Allowances.** Botanical/cultural activities include plant science, history (except for major Salt Lake County organizations), natural history, art, music, theatre, and dance.
 - **Funding Restrictions.** Cultural organizations exclude state agencies, political subdivisions, higher education institutions, and media (only for first-and second-class counties).

These divisions, as previously mentioned, are not always clear-cut. Under code, funding for cultural facilities is permitted, and these facilities are treated like recreational facilities. The Davis Cultural Arts Center is an example of a cultural facility whose construction is statutorily allowed under the definition of a recreational facility.

Some Organizations and Programs Funded Raise Questions Given *Utah Code* Requirements

Our sample review of 89 funded programs and projects identified some programs and projects that appear questionable given statutory language. Unclear statutory guidelines for determining acceptable RAP tax usage and differences between the county and municipal sections of code have, in some instances, given us reason to question compliance.

Some Recreational Project Expenses Appear Inappropriate. Fourteen percent of the recreational projects reviewed appear questionable given statutory language. As noted previously, the municipal statute of the *Utah Code* pertaining to RAP funding (*Utah Code* 59-12-1402(3)) does not list recreational operating expenses as an allowable use of RAP funds. Operating expenses are the day-to-day

Unclear statutory guidelines have, in some instances, given us reason to question compliance.

Salina and Brian Head used RAP money for operating expenses, an activity that appears questionable.

expenses that do not retain value over time. It appears the following two municipalities have inappropriately used RAP money for operating expenses:

- Since the program's inception in 2007, Salina has dedicated their entire RAP allocation (along with Aurora's and Redmond's allocation) to the North Sevier Recreation Department. The recreation department uses the RAP funds as its primary source of operating revenue. While some capital expenditures have been made, RAP money has also covered such operating expenses as baseball equipment, wrestling uniforms, swimsuits, and anything else needed to run the department's recreational activities.
- In fiscal year 2008, Brian Head spent approximately \$4,600 of their RAP recreational funding on a summer concert series, an Oktoberfest, and a Winterfest concert.

Based on current language in statute, Salina's and Brian Head's expenses appear questionable. If the exclusion of these operational activities for municipalities is not the intent of the Legislature, then *Utah Code* needs to be modified.

We question the use of RAP recreational money on a privately owned facility as exemplified in Logan.

Logan offers an additional example of inappropriate recreational fund usage. Privately owned or operated recreational facilities are excluded from receiving RAP recreational funding (*Utah Code* 59-12-702(6)). However, Logan, a Cache County RAP recipient, reported using over \$14,000 of its \$76,000 in RAP recreational funds for the Whittier Center Playground project in 2009. This is problematic because the Whittier Center is owned by a private nonprofit entity, despite the playground's availability to the general public for use. Given the statutory definition of a recreational facility, we question the use of RAP recreational money on this facility.

Some Cultural Recipient Organizations Appear Inappropriate.

Seventeen percent of the cultural recipient organizations did not appear to comply with statutory guidelines. Our sample revealed some exempted organizations that have benefited from RAP cultural funding. Political subdivisions, which encompass public schools, and organizations that do not have acceptable primary purposes are statutorily excluded from receiving cultural funding.

Political subdivisions, which encompass public schools, are specifically excluded from receiving RAP cultural funding.

Public schools have, occasionally, directly benefited from RAP cultural funding. Political subdivisions, including school districts, are specifically excluded from classification as cultural organizations that can receive RAP cultural funding (*Utah Code* 59-12-702(4)(b)(iii)).

The Tooele City Arts Council, Woods Cross, and the Murray City Arts Council provide examples of public schools directly benefiting from RAP cultural funds.

- The Tooele City Arts Council administers RAP cultural money for Tooele. One of the programs funded, the Art Cart program, gives art supplies to Tooele public schools. In fiscal year 2009, approximately \$8,100 was spent on Art Cart supplies. In November 2009, Arts Council meeting minutes noted concerns that the schools were not using their art carts. Consequently, the Arts Council board decided to send a letter to each of the elementary schools, offering them \$1,000 to be used toward promoting the arts.
- In 2009, Woods Cross spent \$10,000 of their RAP cultural funding on Woods Cross Elementary's after-school program. Recently, Woods Cross concluded that this was not an appropriate use of RAP money and decided to no longer fund this after-school program.
- In 2008, the Murray City Arts Council reported to Salt Lake County that a portion of their cultural RAP grant was used for music and art specialists' salaries in Murray School District. Financial documentation shows \$46,000 transferred from Murray City Arts Council to the Murray School District; however, it is not possible to identify how much RAP money was actually involved in this transfer. We saw no evidence that Salt Lake County questioned the reported use.

Given the statutory language exempting political subdivisions from classification as a cultural organization, we question whether public schools should benefit from RAP cultural funding.

In addition, municipalities, as political subdivisions, are also exempted from classification as a cultural organization. Therefore,

Tooele, Woods Cross, and the Murray City Arts Council used RAP cultural funds to directly benefit public schools.

municipalities may not retain and spend cultural funds. However, Woods Cross appears to have done just that.

- In 2009, Woods Cross spent approximately \$7,000 of their RAP cultural funding on their annual Memorial Day breakfast. The funds were used for a climbing wall, entertainment, equipment rental, and food for the event.

Finally, organizations that do not have acceptable primary purposes are also statutorily excluded from receiving cultural funding. According to statute, a cultural organization is a private nonprofit or institution having as its primary purpose the advancement and preservation of history, natural history, art, music, theater, or dance. The following provides an example of an organization that does not appear to meet this primary purpose requirement:

The primary purpose of Cache Community Connections is not the advancement and preservation of history, natural history, art, music, theater, or dance.

- In fiscal year 2009, Cache County awarded \$8,000 in RAP cultural money to Cache Community Connections to put on a concert and lecture at the Logan Tabernacle. Cache Community Connections is composed of religious and civic leaders whose primary purpose is to “promote unity with diversity through understanding.”

Given this purpose, it does not appear that Cache Community Connections was eligible to receive RAP cultural money. Cache County has indicated that this program will not receive future RAP funding.

Other cultural organizations may also have questionable primary purposes. For example, the Chinese Association for Science and Technology and the Hibernian Foundation of Utah both received RAP cultural funding from Salt Lake County although their primary purpose appears to be promoting and preserving cultural identity. While we do not necessarily question the activities funded in these instances, we do question if the organizations’ primary purposes renders them ineligible for RAP funding.

Some Arts-Related Funded Disciplines May Not Qualify.

Fifteen percent of the cultural projects funded appear to involve disciplines that are not specified in statute. As noted earlier, a literal interpretation of the *Utah Code* appears to restrict some presently

funded activities. Folk arts, film, and literature are among the examples of arts-related categories that are not specifically mentioned in code. If it is the intent of the Legislature to include folk arts, film, and literature under the category of art, then perhaps the definition of *art* needs to be further specified. If art-related activities are not intended to be funded with RAP taxes, then there are organizations presently receiving funding that do not qualify. Examples include the Sundance Institute, the Utah Symposium for Science and Literature, and the Guest Writers Program. We recommend that the Legislature further clarify their intent in identifying which activities are appropriate for funding.

We have highlighted examples of organizations and activities funded with RAP taxes for which we found compliance questionable. Identifying compliance, in some instances, was difficult to ascertain. *Utah Code* does not always provide adequate clarity to identify if funded organizations and activities are appropriate.

Majority of Sampled Projects and Recipient Organizations Appear Reasonable

Most of the 89 funded recreational and botanical/cultural projects sampled appear to comply with *Utah Code* requirements. In addition, most of the botanical/cultural recipient organizations seemed reasonable as well.

Most Recreational Projects Reviewed Appear Reasonable. Of the recreational projects reviewed, 86 percent appear to comply with statutory requirements. *Utah Code* requires that recreational projects involve publicly owned or operated recreational facilities but is silent on any recipient organization requirements. In addition, counties may cover both capital and operating expenses with RAP recreational funds, while municipalities may cover only capital expenditures. In our review, we applied this general definition of a capital expenditure: a one-time purchase of an asset that improves or assists an entity in the long-term and holds its value for an extended period of time. The following are examples of recreational projects sampled that we believe meet *Utah Code* requirements:

- The purchase of three metal picnic tables for Newton's city park within Cache County

A literal interpretation of *Utah Code* appears to restrict some presently funded cultural activities such as folk arts, film, and literature.

86 percent of the recreational projects reviewed appear to comply with statutory requirements.

- The construction of a park pavilion for one of Richmond's city parks within Cache County
- The construction of a ball field by Cedar City's Parks and Recreation Department
- The re-plastering of Price City's swimming pool
- The construction of Roosevelt City walking paths
- The paving of Mills Park parking lot in Woods Cross
- The construction of the Magna Splash Pad in Salt Lake County
- The construction of the Big Cottonwood Trail in Salt Lake County
- The construction of the Flight Park in Salt Lake County

85 percent of the botanical/ cultural projects reviewed appear to comply with statutory requirements.

Most Botanical/Cultural Projects Reviewed Appear Reasonable. Of the botanical/cultural projects reviewed, 85 percent appear to comply with *Utah Code* requirements. By statute, botanical/cultural projects must involve one of these disciplines: plant science, history, natural history, art, music, theater or dance. Allowable expenses for botanical/cultural projects are primarily operating expenses. The following are examples of botanical/cultural projects sampled that we believe meet *Utah Code* requirements:

- Marketing expenses, royalty fees, travel expenses, and production costs for Babcock Performing Readers in Salt Lake County —theater discipline
- Musician expenses for Intermezzo Chamber Music Series in Salt Lake County —music discipline
- Part of the director's salary and rent for Tree Utah in Salt Lake County —botanical discipline
- Stage expenses and sound equipment for Mountain Town Music in Summit County —music discipline
- Acting class, payroll, marketing, and production expenses for the Hale Center Theater in Orem —theater discipline
- Greenshow expenses for the Utah Shakespearean Festival in Cedar City —theater discipline
- Advertising, royalty, and performer expenses for the Uintah Arts Council in Roosevelt —theater, music, dance disciplines

A Majority of Botanical/Cultural Recipient Organizations Appear Reasonable. Eighty-three percent of the recipient organizations sampled appear to meet *Utah Code* requirements. The following are examples:

- Jubilate in Salt Lake County, a music discipline
- Plan B Theater Company in Salt Lake County, a theater discipline
- Murray Concert Band in Salt Lake County, a music discipline
- Kimball Arts Center in Summit County, an art discipline
- Cache Valley Civic Ballet in Cache County, a dance discipline
- SCERA Theater in Orem, primarily a theater discipline

We believe all of the organizations and activities highlighted comply with *Utah Code* requirements as currently stated.

83 percent of sampled recipient organizations appear to comply with statutory requirements.

Transparency Varies Among and Within Accounting Systems

Currently, *Utah Code* does not require a specific accounting methodology for the RAP tax revenues and expenditures. Consequently, county and municipal accounting systems that are used to track RAP revenues and expenditures vary somewhat in their transparency. In some systems, it is easy to see expenditures charged against RAP revenue; in other systems, it is not as easy to see these expenditures. Transparency is generally good at the collection level (the county or municipality collecting the tax) but often lost at the grantee level (secondary recipients of RAP funds). Nonetheless, our review did not reveal any instances for which RAP revenue and qualifying expenditures could not be accounted for somehow.

Before discussing the transparency of RAP accounting systems, it is helpful to first understand the two methodologies commonly used to allocate RAP funds, since these methodologies often impact accounting transparency. These allocation methodologies are not mutually exclusive; counties and municipalities sometimes do both.

- First, RAP revenues can be allocated to secondary grantees. These secondary grants can be competitively awarded, or they can be allocated on some proportional basis. Cache County uses both of these secondary allocation methodologies. Fifteen percent of Cache County's RAP funds are proportionally allocated to municipalities based on relative population sizes while the remainder is allocated to grantees using a competitive grant system. Four counties (Salt Lake, Weber, Cache, and

Summit) and three municipalities (Orem, Cedar City, and Tooele) have some form of secondary grantee system.

- Second, RAP revenues collected can be retained by the collecting county or municipality. These funds are generally retained for recreational purposes, although Centerville and Bountiful are retaining funds to build a shared cultural arts facility. One county (Uintah) and eleven municipalities (Bountiful, Centerville, Price, Roosevelt, Salina, Blanding, West Bountiful, Brian Head, Woods Cross, Cedar Hills, and Duchesne) retain almost all of the RAP revenues collected.

RAP funds are restricted in how they can be spent.

Given the funding specifications in *Utah Code* 59-12-702, RAP funds are restricted in how they can be spent. The Utah State Auditor has suggested two accounting methodologies for restricted funds:

- Establish a special revenue account for RAP funds. Special revenue funds enable balance sheets and income statements to be generated exclusively for RAP money and also enable all RAP expenditures to be tracked.
- Establish a restricted account in the general fund for RAP funds. A restricted account enables all RAP expenditures to be tracked.

***Utah Code* does not require any specific accounting methodology for RAP funds.**

The Utah State Auditor also indicated that if capital projects are being funded, RAP money might be placed in a capital projects fund, though he believes this methodology would be unusual. Neither the Government Accounting Standards Board nor the Utah State Auditor's office requires a specific accounting methodology for RAP funds. *Utah Code* is also silent on RAP accounting methodologies. Nonetheless, the Utah State Auditor noted that governments must have the ability to ensure that RAP money is used in accordance with the stated purpose of the law.

Transparency Generally Good at Collection Level

Counties and municipalities that collect a RAP tax generally do a good job of accounting for their RAP tax receipts and expenditures, as displayed in Figure 2.

Figure 2 Counties' and Municipalities' RAP Accounting Methodology. Four counties and eight municipalities account for RAP funds using a methodology suggested by the State Auditor.

Counties	Accounting Methodology	Municipalities	Accounting Methodology
Salt Lake	Special Revenue Fund	Orem	Special Revenue Fund
Weber	Special Revenue Fund	Cedar City	Special Revenue Fund
Cache	Special Revenue Fund	Bountiful	Special Revenue Fund
Summit	Special Revenue Fund	Tooele	Special Revenue Fund
Uintah	Enterprise Fund	Centerville	Special Revenue Fund
		West Bountiful*	Special Revenue Fund
		Woods Cross	Special Revenue Fund
		Price	Restricted Account
		Blanding	Other
		Roosevelt	Other
		Salina	Other
		Brian Head	Other
		Cedar Hills*	Other
		Duchesne	Other
		Aurora **	
		Redmond **	

*West Bountiful and Cedar Hills have not spent any of their RAP funds to date.

**Aurora and Redmond remit their RAP tax collections to Salina. Their accounting methodology was not assessed.

As shown above, 12 of the 19 counties and municipalities (63 percent) used a special revenue fund or a restricted account to track their RAP money. In all 12 counties and municipalities, RAP funding can be readily traced, whether retained internally or provided to secondary grantees.

Six of the seven remaining counties and municipalities could also account for their RAP money; however, we had a concern with Salina. The seventh municipality (Cedar Hills) began collecting its RAP tax recently and has not expended any money yet, so we cannot comment on the transparency of its expenditures. These counties and municipalities did not use restricted accounts or special revenue funds. The following list describes the methodology each county and municipality uses for its' RAP funds:

- Salina can account for the amount of RAP tax received and the North Sevier Recreation Department can provide detailed expense reports for the RAP money. However, we are concerned that North Sevier Recreation Department has maintained an accounting system independent from Salina

In 12 of the 19 counties and municipalities, RAP expenditures can be readily traced.

Salina's only RAP benefactor, North Sevier Recreation Department, has never had its revenues or expenses audited by the Utah State Auditor.

City. Although a recreation board approves all recreation department expenses, the Utah State Auditor has never audited the revenues or expenses of the North Sevier Recreation Department. Because the RAP tax has caused the recreation department's budget to become large, beginning in July 2010, all North Sevier Recreation Department revenues and expenses will run through Salina City's accounts enabling review by the Utah State Auditor.

- Uintah places all RAP money into the Western Park Enterprise Fund. This RAP money is used to cover the majority of Western Park's operating expenses.
- Roosevelt places their RAP money into a specific RAP Tax Revenue account within the general fund. In addition, Roosevelt was able to identify all projects that had been completed with RAP funding since the program began in fiscal year 2006.
- Brian Head can document the amount of RAP funding received as well as the total expenses charged to RAP funding through specific revenue and expense lines. Each specific RAP expense can be generated through a RAP report.
- Blanding can document the amount of RAP money held in their Public Treasurers' Investment Fund. This RAP money (along with other money) is transferred into Blanding's escrow account which is also maintained within the Public Treasurers' Investment Fund. All RAP funds are dedicated to the construction of the San Juan Wellness Center.
- Duchesne can document the amount of RAP tax held in their Public Treasurers' Investment Fund as well as the sole expense incurred so far (\$11,000 for their bowling alley).
- RAP money received by Cedar Hills is documented through a line item in the general ledger. To date, no expenditures have been charged against RAP funds. Although RAP money is not restricted in the general fund, it is restricted in policy. Cedar Hills' policies state that RAP money can only be used for park development and/or maintenance. (Given the current statute, Cedar Hills' policies are too broad. As a municipality, RAP

recreational funds can only be used for capital expenditures, not operating expenses.)

Although some systems could be more transparent, there was never a situation in which adequate qualifying expenditures could not be identified. However, if the Legislature would like to improve accountability and transparency at the collection level, municipalities and counties could be required to account for RAP funds either as a RAP restricted account or as a RAP special revenue account.

Transparency Sometimes Lost at Grantee Level

RAP secondary grantees do not always have accounting systems in place that clearly show expenditures charged against RAP funds. We reviewed the accounting records of 12 secondary grantees. Five of the 12 (42 percent) had transparent records. Each of these five grantees had set up one of the following systems:

- A restricted account
- A sub-account to which RAP expenditures were charged

The remaining seven grantees accounted for RAP expenditures in a less direct way. Specifically, these grantees demonstrated that potentially qualifying RAP expenditures exceeded RAP revenue, thereby accounting for all of the RAP revenue.

This expenditures-greater-than-revenues method does not necessarily promote accountability as demonstrated by the following example:

- In their 2008 report to Salt Lake County, the Murray City Arts Council noted “significant funding from Murray City’s ZAP grant was matched by Murray School District to provide music specialists in all elementary schools.” A \$46,000 payment to Murray City School District was made from the Arts Council’s contractor fee account, to which \$28,000 of RAP money was allocated. The director later indicated that if school district music specialists are ineligible for RAP funding, then there are enough eligible expenses within the contractor fees account to cover the \$28,000 of applied RAP money. The director’s statement was documented, leaving actual RAP expenditures uncertain.

Less than half of all the secondary grantees we reviewed had sufficiently transparent records to account for RAP expenditures.

We did not identify any secondary grantee for which adequate qualifying expenditures could not be identified somehow.

Transparency and accountability of RAP funds can sometimes be problematic for secondary grantees; nonetheless, in reviewing these accounting systems, we did not find any secondary grantee for which adequate qualifying expenditures could not be identified somehow. For example, if Murray City Arts Council's \$46,000 payment to Murray City School District is disallowed, there is still \$52,390 of qualifying contract fee expenditures eligible for RAP funding.

Given that adequate qualifying expenditures could always be identified, we don't see a compelling reason to impose additional accountability requirements. However, if the Legislature chooses to increase accountability then secondary grantees could be required to submit detailed documentation supporting their RAP expenditures to the issuing county or municipality. The issuing county or municipality would be required to resolve any problematic expenditures.

In summary, the governing code for Utah's RAP tax contains elements that are inconsistent and unclear. Within the RAP-funded programs and projects that we reviewed some exceptions were identified. These exceptions generally sprang from inconsistent and unclear statutory elements. However, most programs and projects appeared to be in compliance with *Utah Code* requirements.

We also found that accounting transparency varies among and within accounting systems and that accounting transparency is sometimes lost at the grantee level. Currently, *Utah Code* does not require a particular accounting methodology for the RAP tax. Regardless, no cases were found for which RAP revenue and qualifying expenditures could not be resolved.

Recommendations

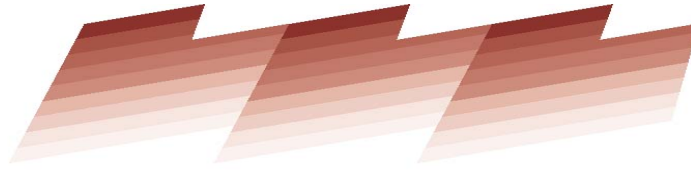
1. We recommend that the Legislature consider reconciling differences found in the county and municipal RAP portions of code to further clarify acceptable RAP usages for counties and municipalities.

2. We recommend that the Legislature consider distinguishing a cultural arts facility from the definition of a recreational facility in *Utah Code* 59-12-702(6) to mitigate any confusion caused by the present wording.
3. We recommend that the Legislature consider defining the term art in *Utah Code* 59-12-702(4)(a)(i)(A) and 59-12-702(4)(a)(ii)(B) to clarify which cultural programs and activities are eligible to receive RAP funding or to substitute the term *arts* for most of the listed disciplines.
4. We recommend that county and municipal RAP enactors enhance compliance by continuing to consult *Utah Code* to ensure that recreational and cultural funds are appropriately disbursed and used.
5. We recommend that the county and municipal RAP enactors ensure that all secondary grantees understand the acceptable uses of RAP money as outlined in *Utah Code*.

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Agency Response

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UTAH ASSOCIATION OF COUNTIES

A Unifying Voice for County Government

July 8, 2010

John M. Schaff
Auditor General
Office of Legislative Auditor General
W 315 Utah State Complex
PO 145315
Salt Lake City, Utah 84114-5315

Dear General Schaff,

We appreciate the opportunity to respond to the audit "A Review of the Use and Accountability of RAP Tax Funds Statewide." We submit these comments on behalf of the Association and our member counties.

The report indicates that counties "do a good job of accounting for their RAP tax receipts." We believe that this finding gives the legislature the assurance it wants that county officials are complying with the requirements of the statutes.

Only one instance was cited where a county may have awarded RAP funds to an organization which does not have an acceptable primary purpose. However, the funding was used by the organization to present a musical concert in one of the historical buildings of the community. Concerts are clearly within the scope of the appropriate uses of the statute. The county has agreed to discontinue future funding to that organization not because of the use of the funds but because it fails to meet the "acceptable primary purpose" of the statute.

The report also recommends several areas of definitional clarification in the wording of the statutes. Counties are open to receive any direction of further clarification by the legislature in how it intends for the funds to be administered.

RAP and ZAP taxes have a very high level of support among the citizens of those counties who have enacted them. The counties are careful in their efforts to insure participation by all segments of the various qualifying uses of the funds and citizens generally are extremely pleased with how the funds are being used and there is board support for the tax.

The Utah Association of Counties stands ready to assist the legislature in making changes to the statutes if it desires and to assist our members in complying with all statutory requirements of the RAP tax.

Sincerely,

L. Brent Gardner
Executive Director



PHONE 801-328-1601
FAX 801-531-1872
WWW.ULCT.ORG

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UTAH'S MUNICIPALITIES

MEMBER
NATIONAL LEAGUE OF CITIES

July 7, 2010

Mr. John M. Schaff, CIA
Legislative Auditor General
Office of the Utah Legislative Auditor General
315 House Building
P.O. Box 145315
Salt Lake City, UT 84114-5315

Dear Mr. Schaff:

Your office has requested a response from the Utah League of Cities and Towns (ULCT) regarding the recently completed audit of the Utah Zoo, Arts, Parks, and Recreation Tax, commonly referred to as the "RAP tax". I have personally reviewed the draft audit report on behalf of the ULCT. My understanding is the draft audit report has not been circulated to every Utah municipality currently imposing the RAP tax. However, the involved municipalities have been made generally aware of the report's conclusions. The ULCT has been asked by the Office of the Legislative Auditor General to provide a general response to the audit and its conclusions.

The audit report's general conclusions indicate that the RAP Tax is being properly administered and the funds appropriately expended. We are pleased with the report's findings. There appear to be some limited and generally minor examples where the audit has questioned RAP tax expenditures as being inconsistent with the intent of the authorizing legislation. In addition, some situations have arisen due to actions by secondary grantors rather than the city itself. Regardless of the circumstances, Utah municipalities are aware of their responsibility to properly administer any governmental funds. Where needed, the audit will serve as a basis for cities to reexamine their policies and procedures.

The audit report recommends that legislation be considered clarifying ambiguous RAP tax statutes. The audit, however, does not recommend any specific legislative proposals. We would hope that our cities would be involved in discussions regarding any legislative changes. Since the audit report generally validates that the RAP tax has been successfully imposed and administered, we are concerned that any legislative changes not inadvertently impact the acknowledged overall success of the RAP tax.

Thank you for the opportunity to respond to the audit report. We look forward to working with the Utah State Legislature as the RAP tax is further reviewed.

Sincerely,

Roger O. Tew
Senior Policy Analyst





PETER M. CORROON
Salt Lake County Mayor

Erin Litvack
Community Services Department
Director

Nilsa Carter
Community Services Department
Associate Director

ZOO, ARTS & PARKS

Victoria Panella Bourns
Program Manager
VBourns@slco.org

Salt Lake County
Government Center
2001 South State Street
Suite N-4100
Salt Lake City, UT 84190

Phone 801 / 468-3517
Fax 801 / 468-2196

www.zap.slco.org



June 28, 2010

John M. Schaff, Auditor General
Office of Legislative Auditor General
130 State Capitol, W315
P.O. Box 140151
Salt Lake City, UT 84114-0151

Dear Mr. Schaff,

The Salt Lake County Zoo, Arts and Parks (ZAP) program is pleased to have the opportunity to respond to the "Exposure Draft" of A Review of the Use and Accountability of RAP Tax Funds Statewide (Report No. 2010-07). Reviewing how RAP funds are spent and tracking the expenditures are important to the continuance of these programs and we appreciate your attention to this issue.

The 1/10th of 1% Botanical, Cultural, Recreational and Zoological funds have assured the continuing existence and growth of Salt Lake County's recreational facilities and cultural organizations. As ZAP is located in our capitol county, we are a major funder of the premiere arts and cultural organizations that have a statewide presence and reach. These organizations augment our economic development by enhancing the quality of life for our citizens and visitors. Many of the ZAP recipients serve as national and international ambassadors, showcasing our state's artistic and cultural excellence around the world. Just recently the Ririe-Woodbury Dance Company, received rave reviews and comments in the New York Times and The New Yorker Magazine for their performance in New York City.

Salt Lake County appreciates the Legislature's support of Utah Code [59-12-701(6)], which allows us to "provide adequate predictable support to a fixed number of botanical and cultural organizations and that gives the county legislative body discretion to allocate the tax revenues to other botanical and cultural organizations".

The Salt Lake County ZAP Program was pleased to work with the State on this audit. The Office of Legislative Auditor General's staff were professional in their approach to this effort. They were considerate of County staff time as our cultural granting process is administered by one person. Many agencies within Salt Lake County have a role in the contracting, distribution and accounting processes of the ZAP program and I am grateful for their assistance. Currently Utah Code [59-12-704(7)] allows us to withhold 1.5% of the funds for administrative overhead. While this is greatly appreciated Salt Lake County must use general funds to subsidize the ZAP program and the use of other agency services, i.e. District Attorney's office, Treasurer's Office, Auditor's Office, Community Services Department, Contracts and Procurement Division and others as required. Considering the volume of applications and the resources available, Salt Lake County runs an extremely effective and efficient ZAP program. We continue to improve the process on a regular basis. This year we revised our Financial Health Criteria in order to hold recipients more accountable.

We are pleased with the overall tone and result of this report. It was gratifying that the report found qualifying expenditures to account for all ZAP revenues. Based on your findings, the recommendations reported on page 21 are reasonable. As you noted, the Code has been amended many times and can be difficult to read and interpret, especially for the layperson. While not in the scope of this audit, we feel it is important to communicate that the appropriate uses of these funds have enhanced the quality of life for citizens and visitors alike. Reviewing the number of people benefiting from ZAP recipient services, over 6 million people attended an event during the 2008-2009 fiscal period.

Regarding specific details in this report:

Page 6 & 12: Meaning of the Term Art Is Unclear

Salt Lake County has used a broad definition of art for several reasons. First, the title of the Code includes culture, which is a broad term for all the arts (commonly referred to as “cultural arts” in Utah). Second, the purpose statement of the Code [59-12-701(6)] clearly indicates that “the county legislative body has discretion in the allocation process”. The Salt Lake County ZAP program strongly advocates for clarification and a broad interpretation of art. We believe that the organizations mentioned in the report add to the cultural diversity of our community and serve to enhance our quality of life. The Sundance Institute serves the purpose described in the Utah Code. A recent economic report noted that the 10-day Sundance Institute event supports 1,513 jobs; generates nearly \$3.3 million in tax revenue; and attracts worldwide media exposure in excess of \$18 million.

Page 6: Exclusion of Higher Education Institutions

Salt Lake County Commissioners were very involved in the original passage of the 1/10th of 1% statute. Several people involved in the initial creation of the legislation recall that the major cultural institutions at the University of Utah were expected to be funded from this sales tax initiative. The statute does not specifically exclude institutions of higher education. It appears the description of “administrative unit” in the Code [59-12-702(1)] clearly describes the University of Utah organizations. As stated in the report, all University of Utah recipients receive much less than 50% of their income from State funds. The University of Utah organizations are essential to the health of our cultural community and provide services to over 400,000 people annually. They also provided free admissions for 159,116 people in 2008-2009. It would be helpful for the statute to clearly articulate this inclusion.

Page 7 & 8: Supplanting

It may be worth noting that the purpose statement for Utah Code [59-12-701(5)] clearly indicates that the 1/10th of 1% funding should not supplant state funding. One might take this conclusion further based on the language in the statute’s purpose statement.

Page 19: Transparency Sometimes Lost at Grantee Level

There are many forms of transparency and ways to achieve accountability. Salt Lake County has a contract with each ZAP recipient that allows us to audit any organization when causes arise. Managing over 150 grantees can be a challenge with limited resources. The ZAP program has implemented different threshold requirements in order to require greater accountability for those organizations receiving greater funds. All Tier I, Zoological and Tier II organizations receiving over \$60,000 must submit three years of audited financial statements from a certified Utah CPA or firm. Organizations requesting from \$30,000 to \$59,999 must submit one year of audited financial statements. Organizations requesting over \$15,000 to \$30,000 must submit a certified review. All these financial statements are reviewed by a third party, namely an independent outside CPA. If an organization does not pass our "Financial Health Criteria", they must submit a financial health plan and provide regular reports as to the results of the implementation of their plan. These requirements take a holistic approach to the process and give us the confidence that qualifying expenditures are accurate and the organizations are using their funding within statutory requirements.

If I can be of further assistance please do not hesitate to contact me. When appropriate, I would appreciate being informed as to the date and times for the presentation of this report to the Legislature. Again, on behalf of Salt Lake County, thank you for allowing us to comment on this "Exposure Draft".

Sincerely,



Victoria Panella Bourns
Program Manager
801 468-3517

cc. Janice Coleman

Part 14
**City or Town Option Funding for Botanical, Cultural,
Recreational, and Zoological Organizations or Facilities**

59-12-1401 Purpose statement -- Definitions -- Scope of part.

- (1) The purpose of the tax imposed by this part is the same for cities and towns as is stated in Section 59-12-701 for counties.
- (2) The definitions of Section 59-12-702 are incorporated into this part.
- (3) This part applies only to a city or town that is located within a county of the second, third, fourth, fifth, or sixth class as designated in Section 17-50-501.

Amended by Chapter 317, 2004 General Session

59-12-1402 Opinion question election -- Base -- Rate -- Imposition of tax -- Expenditure of revenue -- Enactment or repeal of tax -- Effective date -- Notice requirements.

- (1)
 - (a) Subject to the other provisions of this section, a city or town legislative body subject to this part may submit an opinion question to the residents of that city or town, by majority vote of all members of the legislative body, so that each resident of the city or town has an opportunity to express the resident's opinion on the imposition of a local sales and use tax of .1% on the transactions described in Subsection 59-12-103(1) located within the city or town, to:
 - (i) fund cultural facilities, recreational facilities, and zoological facilities and botanical organizations, cultural organizations, and zoological organizations in that city or town; or
 - (ii) provide funding for a botanical organization, cultural organization, or zoological organization to pay for use of a bus or facility rental if that use of the bus or facility rental is in furtherance of the botanical organization's, cultural organization's, or zoological organization's primary purpose.
 - (b) The opinion question required by this section shall state:

"Shall (insert the name of the city or town), Utah, be authorized to impose a .1% sales and use tax for (list the purposes for which the revenue collected from the sales and use tax shall be expended)?"
 - (c) A city or town legislative body may not impose a tax under this section:
 - (i) if the county in which the city or town is located imposes a tax under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities;
 - (ii) on the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104; and
 - (iii) except as provided in Subsection (1)(e), on amounts paid or charged for food and food ingredients.
 - (d) For purposes of this Subsection (1), the location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.
 - (e) A city or town legislative body imposing a tax under this section shall impose the tax on the purchase price or sales price for amounts paid or charged for food and food ingredients if the food and food ingredients are sold as part of a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients.
 - (f) Except as provided in Subsection (6), the election shall be held at a regular general election or a municipal general election, as those terms are defined in Section 20A-1-102, and shall follow the procedures outlined in Title 11, Chapter 14, Local Government Bonding Act.

- (2) If the city or town legislative body determines that a majority of the city's or town's registered voters voting on the imposition of the tax have voted in favor of the imposition of the tax as prescribed in Subsection (1), the city or town legislative body may impose the tax by a majority vote of all members of the legislative body.
- (3) Subject to Section 59-12-1403, revenue collected from a tax imposed under Subsection (2) shall be expended:
 - (a) to finance cultural facilities, recreational facilities, and zoological facilities within the city or town or within the geographic area of entities that are parties to an interlocal agreement, to which the city or town is a party, providing for cultural facilities, recreational facilities, or zoological facilities;
 - (b) to finance ongoing operating expenses of:
 - (i) recreational facilities described in Subsection (3)(a) within the city or town or within the geographic area of entities that are parties to an interlocal agreement, to which the city or town is a party, providing for recreational facilities; or
 - (ii) botanical organizations, cultural organizations, and zoological organizations within the city or town or within the geographic area of entities that are parties to an interlocal agreement, to which the city or town is a party, providing for the support of botanical organizations, cultural organizations, or zoological organizations; and
 - (c) as stated in the opinion question described in Subsection (1).
- (4)
 - (a) Except as provided in Subsection (4)(b), a tax authorized under this part shall be:
 - (i) administered, collected, and enforced in accordance with:
 - (A) the same procedures used to administer, collect, and enforce the tax under:
 - (I) Part 1, Tax Collection; or
 - (II) Part 2, Local Sales and Use Tax Act; and
 - (B) Chapter 1, General Taxation Policies; and
 - (ii)
 - (A) levied for a period of eight years; and
 - (B) may be reauthorized at the end of the eight-year period in accordance with this section.
 - (b)
 - (i) If a tax under this part is imposed for the first time on or after July 1, 2011, the tax shall be levied for a period of 10 years.
 - (ii) If a tax under this part is reauthorized in accordance with Subsection (4)(a) on or after July 1, 2011, the tax shall be reauthorized for a ten-year period.
 - (c) A tax under this section is not subject to Subsections 59-12-205(2) through (6).
- (5)
 - (a) For purposes of this Subsection (5):
 - (i) "Annexation" means an annexation to a city or town under Title 10, Chapter 2, Part 4, Annexation.
 - (ii) "Annexing area" means an area that is annexed into a city or town.
 - (b)
 - (i) Except as provided in Subsection (5)(c) or (d), if, on or after July 1, 2004, a city or town enacts or repeals a tax under this part, the enactment or repeal shall take effect:
 - (A) on the first day of a calendar quarter; and
 - (B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (5)(b)(ii) from the city or town.
 - (ii) The notice described in Subsection (5)(b)(i)(B) shall state:
 - (A) that the city or town will enact or repeal a tax under this part;

- (B) the statutory authority for the tax described in Subsection (5)(b)(ii)(A);
 - (C) the effective date of the tax described in Subsection (5)(b)(ii)(A); and
 - (D) if the city or town enacts the tax described in Subsection (5)(b)(ii)(A), the rate of the tax.
- (c)
- (i) If the billing period for a transaction begins before the effective date of the enactment of the tax under this section, the enactment of the tax takes effect on the first day of the first billing period that begins on or after the effective date of the enactment of the tax.
 - (ii) The repeal of a tax applies to a billing period if the billing statement for the billing period is produced on or after the effective date of the repeal of the tax imposed under this section.
- (d)
- (i) If a tax due under this chapter on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in Subsection (5)(b)(i) takes effect:
 - (A) on the first day of a calendar quarter; and
 - (B) beginning 60 days after the effective date of the enactment or repeal under Subsection (5)(b)(i).
 - (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."
- (e)
- (i) Except as provided in Subsection (5)(f) or (g), if, for an annexation that occurs on or after July 1, 2004, the annexation will result in the enactment or repeal of a tax under this part for an annexing area, the enactment or repeal shall take effect:
 - (A) on the first day of a calendar quarter; and
 - (B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (5)(e)(ii) from the city or town that annexes the annexing area.
 - (ii) The notice described in Subsection (5)(e)(i)(B) shall state:
 - (A) that the annexation described in Subsection (5)(e)(i) will result in an enactment or repeal a tax under this part for the annexing area;
 - (B) the statutory authority for the tax described in Subsection (5)(e)(ii)(A);
 - (C) the effective date of the tax described in Subsection (5)(e)(ii)(A); and
 - (D) the rate of the tax described in Subsection (5)(e)(ii)(A).
- (f)
- (i) If the billing period for a transaction begins before the effective date of the enactment of the tax under this section, the enactment of the tax takes effect on the first day of the first billing period that begins on or after the effective date of the enactment of the tax.
 - (ii) The repeal of a tax applies to a billing period if the billing statement for the billing period is produced on or after the effective date of the repeal of the tax imposed under this section.
- (g)
- (i) If a tax due under this chapter on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in Subsection (5)(e)(i) takes effect:
 - (A) on the first day of a calendar quarter; and
 - (B) beginning 60 days after the effective date of the enactment or repeal under Subsection (5)(e)(i).
 - (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."
- (6)

- (a) Before a city or town legislative body submits an opinion question to the residents of the city or town under Subsection (1), the city or town legislative body shall:
 - (i) submit to the county legislative body in which the city or town is located a written notice of the intent to submit the opinion question to the residents of the city or town; and
 - (ii) receive from the county legislative body:
 - (A) a written resolution passed by the county legislative body stating that the county legislative body is not seeking to impose a tax under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities; or
 - (B) a written statement that in accordance with Subsection (6)(b) the results of a county opinion question submitted to the residents of the county under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, permit the city or town legislative body to submit the opinion question to the residents of the city or town in accordance with this part.
- (b)
 - (i) Within 60 days after the day the county legislative body receives from a city or town legislative body described in Subsection (6)(a) the notice of the intent to submit an opinion question to the residents of the city or town, the county legislative body shall provide the city or town legislative body:
 - (A) the written resolution described in Subsection (6)(a)(ii)(A); or
 - (B) written notice that the county legislative body will submit an opinion question to the residents of the county under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, for the county to impose a tax under that part.
 - (ii) If the county legislative body provides the city or town legislative body the written notice that the county legislative body will submit an opinion question as provided in Subsection (6)(b)(i)(B), the county legislative body shall submit the opinion question by no later than, from the date the county legislative body sends the written notice, the later of:
 - (A) a 12-month period;
 - (B) the next regular primary election; or
 - (C) the next regular general election.
 - (iii) Within 30 days of the date of the canvass of the election at which the opinion question under Subsection (6)(b)(ii) is voted on, the county legislative body shall provide the city or town legislative body described in Subsection (6)(a) written results of the opinion question submitted by the county legislative body under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, indicating that:
 - (A)
 - (I) the city or town legislative body may not impose a tax under this part because a majority of the county's registered voters voted in favor of the county imposing the tax and the county legislative body by a majority vote approved the imposition of the tax; or
 - (II) for at least 12 months from the date the written results are submitted to the city or town legislative body, the city or town legislative body may not submit to the county legislative body a written notice of the intent to submit an opinion question under this part because a majority of the county's registered voters voted against the county imposing the tax and the majority of the registered voters who are residents of the city or town described in Subsection (6)(a) voted against the imposition of the county tax; or
 - (B) the city or town legislative body may submit the opinion question to the residents of the city or town in accordance with this part because although a majority of the county's

registered voters voted against the county imposing the tax, the majority of the registered voters who are residents of the city or town voted for the imposition of the county tax.

- (c) Notwithstanding Subsection (6)(b), at any time a county legislative body may provide a city or town legislative body described in Subsection (6)(a) a written resolution passed by the county legislative body stating that the county legislative body is not seeking to impose a tax under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, which permits the city or town legislative body to submit under Subsection (1) an opinion question to the city's or town's residents.

Amended by Chapter 422, 2017 General Session

59-12-1403 Distribution of revenues -- Administrative costs.

- (1)
- (a) The city or town legislative body shall by ordinance provide for the distribution of the entire amount of the revenues collected from the tax imposed by this part:
 - (i) in accordance with this section; and
 - (ii) as stated in the opinion question described in Subsection 59-12-1402(1).
 - (b) A city or town may participate in an interlocal agreement provided for under Section 59-12-704 and distribute the revenues collected from the tax imposed by this part to participants in the interlocal agreement.
 - (c) Subject to Subsection (1)(a), revenues collected from the tax shall be used for one or more organizations or facilities defined in Section 59-12-702.
- (2) The commission shall retain and deposit an administrative charge in accordance with Section 59-1-306 from the revenues the commission collects from a tax under this part.

Amended by Chapter 309, 2011 General Session

Amended by Chapter 416, 2011 General Session

59-12-1405 Seller or certified service provider reliance on commission information.

A seller or certified service provider is not liable for failing to collect a tax at a tax rate imposed under this part if the seller's or certified service provider's failure to collect the tax is as a result of the seller's or certified service provider's reliance on incorrect data provided by the commission in a database created by the commission:

- (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or
- (2) indicating the taxability of tangible personal property, a product transferred electronically, or a service.

Amended by Chapter 203, 2009 General Session

59-12-1406 Certified service provider or model 2 seller reliance on commission certified software.

- (1) Except as provided in Subsection (2) and subject to Subsection (4), a certified service provider or model 2 seller is not liable for failing to collect a tax required under this part if:
- (a) the certified service provider or model 2 seller relies on software the commission certifies; and
 - (b) the certified service provider's or model 2 seller's failure to collect a tax required under this part is as a result of the seller's or certified service provider's reliance on incorrect data:
 - (i) provided by the commission; or
 - (ii) in the software the commission certifies.

- (2) The relief from liability described in Subsection (1) does not apply if a certified service provider or model 2 seller incorrectly classifies an item or transaction into a product category the commission certifies.
- (3) If the taxability of a product category is incorrectly classified in software the commission certifies, the commission shall:
 - (a) notify a certified service provider or model 2 seller of the incorrect classification of the taxability of a product category in software the commission certifies; and
 - (b) state in the notice required by Subsection (3)(a) that the certified service provider or model 2 seller is liable for failing to collect the correct amount of tax under this part on the incorrectly classified product category if the certified service provider or model 2 seller fails to correct the taxability of the item or transaction within 10 days after the day on which the certified service provider or model 2 seller receives the notice.
- (4) If a certified service provider or model 2 seller fails to correct the taxability of an item or transaction within 10 days after the day on which the certified service provider or model 2 seller receives the notice described in Subsection (3), the certified service provider or model 2 seller is liable for failing to collect the correct amount of tax under this part on the item or transaction.

Enacted by Chapter 384, 2008 General Session

59-12-1407 Purchaser relief from liability.

- (1)
 - (a) Except as provided in Subsection (1)(b), a purchaser is relieved from a penalty under Section 59-1-401 for failure to pay a tax due under this part or an underpayment if:
 - (i) the purchaser's seller or certified service provider relies on incorrect data provided by the commission:
 - (A) on a tax rate;
 - (B) on a boundary;
 - (C) on a taxing jurisdiction; or
 - (D) in the taxability matrix the commission provides in accordance with the agreement; or
 - (ii) the purchaser, regardless of whether the purchaser holds a direct payment permit in accordance with Section 59-12-107.1, relies on incorrect data provided by the commission:
 - (A) on a tax rate;
 - (B) on a boundary;
 - (C) on a taxing jurisdiction; or
 - (D) in the taxability matrix the commission provides in accordance with the agreement.
 - (b) For purposes of Subsection (1)(a), a purchaser is not relieved from a penalty under Section 59-1-401 for failure to pay a tax due under this part or an underpayment if the purchaser's, the purchaser's seller's, or the purchaser's certified service provider's reliance on incorrect data provided by the commission is as a result of conduct that is:
 - (i) fraudulent;
 - (ii) intentional; or
 - (iii) willful.
- (2) In addition to the relief from a penalty described in Subsection (1), a purchaser is not liable for a tax or interest under Section 59-1-402 for failure to pay a tax due under this part or an underpayment if:
 - (a) the purchaser's seller or certified service provider relies on:
 - (i) incorrect data provided by the commission:
 - (A) on a tax rate;

- (B) on a boundary; or
- (C) on a taxing jurisdiction; or
- (ii) an erroneous classification by the commission:
 - (A) in the taxability matrix the commission provides in accordance with the agreement; and
 - (B) with respect to a term:
 - (I) in the library of definitions; and
 - (II) that is:
 - (Aa) listed as taxable or exempt;
 - (Bb) included in or excluded from "sales price"; or
 - (Cc) included in or excluded from a definition; or
- (b) the purchaser, regardless of whether the purchaser holds a direct payment permit in accordance with Section 59-12-107.1, relies on:
 - (i) incorrect data provided by the commission:
 - (A) on a tax rate;
 - (B) on a boundary; or
 - (C) on a taxing jurisdiction; or
 - (ii) an erroneous classification by the commission:
 - (A) in the taxability matrix the commission provides in accordance with the agreement; and
 - (B) with respect to a term:
 - (I) in the library of definitions; and
 - (II) that is:
 - (Aa) listed as taxable or exempt;
 - (Bb) included in or excluded from "sales price"; or
 - (Cc) included in or excluded from a definition.

Enacted by Chapter 384, 2008 General Session

RAP TAC Agenda Item

Meeting Date: October 17, 2022

Title: Review of RAP TAC Role and Timeline

Presenter: Annie McVay, Parks, Recreation and Trails Director

Background/Summary:

The purpose of the RAP Committee is to receive applications from groups that qualify to receive RAP tax funds; review the applications; and recommend allocation of the RAP tax revenue to the Moab City Council.

Since this is the inaugural year of the RAP Tax and RAP TAC, there are several initial steps and program development before inviting organizations to apply for RAP Tax projects. These include:

1. Adopting Committee Bylaws (next meeting)
2. Developing program guidelines: this includes who is eligible to apply, types of projects that are eligible and other specific requirements
3. Developing the application form, process and review criteria.
4. Presenting the guidelines and process to City Council
5. Finalize and open the call for projects
6. Review and rate the projects
7. Present the project recommendations to City Council for final approval
8. Allocate the funds and implement reporting requirements
9. Continually market the program and provide information to the public.

RESOURCES

Below are links to RAP tax committees in cities with comparable population to Moab City:

[Ephraim](#)

[Kanab](#)

[Nephi](#)

[Santa Clara](#)

Examples of RAP tax committees in larger cities and counties:

[Heber](#)

[Logan](#)

[Provo](#)

[Santaquin](#)

[Spanish Fork](#)

[Summit County](#)

[Wasatch County](#)

[Washington County](#)

RAP TAC Agenda Item

Meeting Date: October 17, 2022

Title: . Discussion of RAP Tax Project Guidelines and Application Process

Presenter: Annie McVay, Parks, Recreation and Trails Director

Attachment(s): RAP Tax Examples

Background/Summary:

According to State Code, the Recreation, Arts & Parks tax revenues can only be used for recreational, cultural, arts and parks facilities and programs provided by the city or qualifying nonprofit groups. But the RAP Tax legislation leaves considerable discretion to the City on how to implement a RAP Tax distribution program.

The RAP TAC needs to develop formalized guidelines for the distribution of RAP Tax funds and clearly communicate these requirements to potential applicants. The following are topics to consider when developing these guidelines.

- The purpose and mission of Moab city in offering grants. Develop a mission statement?

Eligibility Requirements:

- Do applicants need to have 501(c)(3) status? o Applicants are required to have a 501(c)(3) status to qualify for a grant. If an applicant (such as a local artist) does not have such status, they are then recommended to partner with an organization that does.
- Parameters for types of qualified organizations – art creation, art presentation, recreation facilities and capital projects, recreation programs, and within Moab city limits
- The location of the project takes place within Moab city limits?
- Do organizations need to match funds granted?
- Define parameters for project timeline (i.e., Should the project be completed within the Moab city fiscal year or a calendar year?)

An example of allowable uses and excluded uses from Summit County is provided below for reference/discussion. The Attachment provides links to several other agency's RAP Tax programs for review.

Summit County

RAP/Tax funds may be USED for expenditures directly related to:

- Collections /Exhibits: Acquisitions or public display of Items that in part or as a whole are collected or exhibited.
- Contracted Services: Services obtained through the aid or direction of a second individual or company. (Includes Legal/audit, contracted performers or artists, honorariums for docents, speakers)

- General Administration: General operation of the organization, excluding salaries and space rental. (Includes utilities, office supplies, service and/or purchase of equipment)
- Marketing/Advertising: Promotion within Summit County of the organization's projects/programs
- Programs/Performance/Production: Staging of programs, performances, productions, cultural festivals
- Projects: Development of one-of-a-kind or one-time physical item or one-time event
- Salaries (Administrative): Salaries for administrative personnel for whom taxes are paid
- Salaries (other); Salaries for other personnel for whom taxes are paid
- School Outreach: Field trips and in-school performances, presentations or exhibits provided to schools located in Summit County
- Space Rental: Facility or office space rental (Includes office as well as performance space)
- Travel/Housing: Travel by organization's staff for specific projects/programs; travel and housing for performers
- Other: all other expenditures (Could include camps, non-school classes, insurance)

RAP/Tax funds may NOT BE USED for:

- Accumulated deficits or debt retirement
- Capital Improvements (In Summit County, a capital expenditure is defined as any item that costs \$5,000 or more and has a useful life of over 2 years)
- Public schools and/or school programs or hiring of temporary or permanent staff
- Lobbying Expenses
- Scholarships, purchase awards or cash prizes
- Magazines or Newspapers
- Broadcast network or cable communications systems (if a Class 1 or 2 County)
- Performance, events and activities that take place outside Summit County
- Activities intended primarily for fundraising
- Recreational, rehabilitative or therapeutic programs
- Special Service Programs
- Fireworks
- Sister city programs
- Rodeos
- Non-cultural celebrations
- Activities that are primarily religious in purpose
- Cash reserves