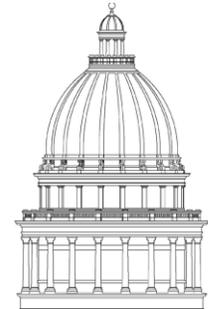


Office of
LEGISLATIVE AUDITOR GENERAL
State of Utah

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.

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:

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

- (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.

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.

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

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.

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

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

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.

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.

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

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

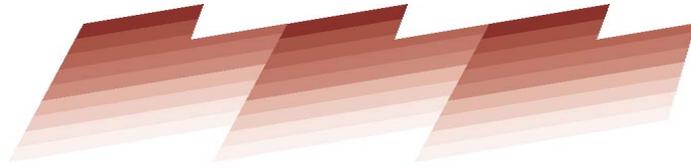
1. We recommend that the Legislature consider reconciling differences found in the county and municipal RAP portions of code to further clarify acceptable RAP usages for counties and municipalities.

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*.

This Page Left Blank Intentionally

Agency Response

This Page Left Blank Intentionally



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

OFFICERS

PRESIDENT
STEVE FAIRBANKS
COUNCIL MEMBER, SANDY

1ST VICE PRESIDENT
MIKE WINDER
MAYOR, WEST VALLEY CITY

2ND VICE PRESIDENT
SCOTT HARBERTSON
MAYOR, FARMINGTON

IMMEDIATE PAST PRESIDENT
JILL REMINGTON LOVE
COUNCIL MEMBER, SALT LAKE CITY

BOARD OF DIRECTORS

CARLTON CHRISTENSEN
COUNCIL MEMBER, SALT LAKE CITY

CANDACE ERICKSON
COUNCIL MEMBER, PARK CITY

CAITLIN GOCHNOUR
COUNCIL MEMBER, OGDEN

MELISSA JOHNSON
MAYOR, WEST JORDAN

GERALD KNIGHT
MAYOR, NIBLEY

SONJA NORTON
COUNCIL MEMBER, VERNAL

JIM ORTLER
COUNCIL MEMBER, BRIAN HEAD

LYNN PACE
COUNCIL MEMBER, HOLLADAY

DAVE SAKRISON
MAYOR, MOAB

STEVE TURLEY
COUNCIL MEMBER, PROVO

WARREN VAUGHN
COUNCIL MEMBER, WASHINGTON TERRACE

RUSS WALL
MAYOR, TAYLORSVILLE

EX-OFFICIO MEMBERS

TOM BAKALY, PARK CITY
UTAH CITY MANAGEMENT ASSOC.
PRESIDENT

DONNA WEAVER, OREM
UTAH MUNICIPAL CLERKS ASSOC.
PRESIDENT

NANCY DEAN, CLEARFIELD
UTAH MUNICIPAL CLERKS ASSOC.
2ND VICE PRESIDENT

TREASURER
JOANN B. SEGHINI
MAYOR, MIDVALE

EXECUTIVE DIRECTOR
KENNETH H. BULLOCK

GENERAL COUNSEL
DAVID CHURCH

OVER 100 YEARS
OF SERVICE TO
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





**SALT LAKE
COUNTY**

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