

Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

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Distributor Discounts/Allowances to Grocery Stores

Purpose

This Excise Tax Advisory explains the business and occupation (B&O) tax liability for grocery stores receiving distributor allowances or discounts.¹

Bona fide vs. non bona fide discounts

The Department of Revenue’s (Department) long standing position is that a discount is not *bona fide* if it is in exchange for a service. Please see the following table:

	Exchanged for Service	<i>Bona Fide</i>	Deductible	Taxable
Discount 1	Yes	No	No	Yes
Discount 2	No	Yes	Yes	No

Generally, a *bona fide* discount negotiated by the grocer upon purchase of the goods does nothing more than encourage the grocer to make sales they were already going to make. However, if a grocer performs a service in addition to the sale, then the discount is not *bona fide*.

Taxable non bona fide discounts

Examples of discounts that are not *bona fide* because the person providing the allowance receives a service or benefit in return include, include but are not limited to:

- Advertising allowance
 - An example of an advertising allowance is when a grocer receives some form of payment or a discount from a distributor for advertising a distributor’s products in print, on the Internet, or in the Taxpayer’s place of business.

¹ For the purposes of this document only, the terms “allowance” and “discount” are used interchangeably.

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If you have questions regarding your tax-reporting responsibilities:
 - Visit our website at dor.wa.gov;
 - Send an email to communications@dor.wa.gov;
 or
 - Call the Department’s Telephone Information Center at 1-800-647-7706.

- Exclusivity allowance
 - An example of an exclusivity allowance is when a grocer receives some form of payment or a discount from a distributor for carrying only the distributor's products.
- Placement (slotting) allowance
 - An example of a placement allowance is when a grocer receives a payment or discount from a distributor for introducing a product line in the store or for placing a product in certain locations or in certain displays in the store.

Regardless of the transaction involved, the discounts described above are taxable, generally subject to Service & Other B&O tax.

**Nontaxable
bona fide
discounts**

Examples of discounts that are *bona fide* when the person providing the allowance does not receive a service or benefit in return include, but are not limited to:

- Off-invoice allowance
 - An example of an off-invoice allowance is when a distributor reduces the price of a product by discounting the invoice price.
- Scan-down allowance
 - An example of a scan-down allowance is when a distributor gives the grocer a payment or a discount for selling a specific volume of products during a specific timeframe.
- Volume discount allowance
 - An example of a volume discount allowance is when a distributor and a grocer agree in advance on a payment or discount on a per case/item basis and the grocer invoices the distributor at the end of a particular period.

Generally, the Department will find the transactions described immediately above to be deductible.

**Grocery
industry
advertising –
Example 1**

In the grocery store industry advertising is a service that does not require a formal contract. Generally, in the absence of a written contract, industry standards, practice, or expectations, and substantial performance are acceptable forms of proof that a grocer performed advertising services in exchange for an allowance or discount. Accordingly, allowances or discounts provided in exchange for advertising services performed without a written contract are not *bona fide*.

The following example explains the scenario described above:

Example 1

Facts

Distributor provides Grocer a list of items to advertise. Grocer advertises some (not all) of the items on the list. Grocer receives a discount for both the advertised and unadvertised items. The parties agree to this transaction without a written contract.

Conclusion

The discount for the advertised items is not *bona fide* because Grocer performed advertising services in return for the discount. However, the discount received for the unadvertised items is *bona fide*.

Example 2

Example 2

Facts

Shoppers in Grocer's "Membership" program receive lower prices on specially marked items. Distributor provides Grocer a retail pricing allowance or discount for advertising the specially priced items to "member" shoppers.

Conclusion

The allowance or discount is not *bona fide* because Grocer advertised the discounted items associated with its membership program in exchange for the discount.

Example 3

Example 3

Facts

Distributor provides a discount and advertising materials on items Grocer purchases from Distributor.

Conclusion

If Grocer's records show they did not advertise any of Distributor's products in exchange for the discount, then the discount is *bona fide*. Grocer bears the burden of proof to show no advertising services occurred in exchange for the discount.

Example 4

Example 4

Facts

Same facts as Example 3.

Conclusion

If Grocer's records show they advertised any of the Distributor's products, in print, on the internet, or using electronic social media, in exchange for the discount, then the discount is not *bona fide*.

**Records
Retention**

Grocery stores claiming a discount is *bona fide* discount frequently do not retain necessary records documenting that these transactions are unrelated to advertising services. The Department has previously requested records of these transactions and grocers could not produce adequate documentation substantiating the claim that the discount was unrelated to an advertising service; not retaining these records appears to be standard industry practice.

The Department requires proper documentation to support any claimed deduction or exemption. Under [RCW 82.32A.030\(3\)](#) Taxpayers must, “keep accurate and complete business records.” As a result, if a grocery store does not have adequate records supporting the claimed deduction, the discount may not adjust the sales price and the gross income will be taxable.

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