

Excise Tax Advisory

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Use Tax Liability for Lessees on Leased Tangible Personal Property

What does this ETA address? This Excise Tax Advisory (ETA) addresses a lessee's use tax payment responsibility. This most frequently occurs when a lessee brings leased property into Washington from outside the state. For purposes of this ETA, the terms "lease" and "rent" are used interchangeably.

General use tax background Use tax is a tax imposed on the use of tangible personal property (property) and other products in Washington when retail sales tax has not previously been paid. Use tax applies to the use of leased property brought into the state, if the lessee's purchase or use of the leased property was not previously subject to Washington's retail sales or use tax. A person is subject to either Washington's retail sales or use tax, but not both with respect to the same leased property. A lessee is responsible for paying Washington's use tax unless a specific exemption applies.

Measure of use tax RCW 82.12.010 provides the statutory requirements for determining the measure of use tax.

The amount of use tax due is measured by the "value of the article used." RCW 82.12.010(7)(a) provides:

"Value of the article used" is the purchase price for the article of tangible personal property, the use of which is taxable under this chapter. The term also includes, in addition to the purchase price, the amount of any tariff or duty paid with respect to the importation of the article used. *In case the*

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article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the *value of the article used is determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department may prescribe.* [Emphasis added]

In the case of leased property, the measure of use tax is the full amount of the lease payment for the lease period during which the property was used in Washington, unless that lease payment does not represent the true value for that period. The number of days or time spent in Washington is immaterial. If leased property is brought into Washington for any length of time during a lease period, use tax is due on the value attributable to that entire lease period.

Credit for taxes paid to other states

Lessees are eligible to claim a credit against the amount of use tax due for sales or use tax legally imposed and paid by the lessee to any other state, possession, territory, or commonwealth of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof for the same lease. RCW 82.12.035.

Use tax example

The example provided in this ETA is to be used only as a general guide. The tax results of other situations must be determined separately after review of all the facts and circumstances.

The example presumes:

- The identified lease payment amounts represent a reasonable rental value for the property; and
- Unless otherwise stated, no use tax exemption is provided in law.

Example

ThomCorp leases an airplane from an Oregon LLC for 3 years, with payments of \$10,000 per month. Delivery of the airplane occurs in Salem, Oregon. The primary property location of the airplane is Salem, Oregon. ThomCorp routinely (once per month) uses the aircraft to shuttle executives and guests between its Salem, Oregon, and Spokane, Washington, business locations. No retail sales or use tax is imposed with respect to the lease in Oregon.

ThomCorp incurs a use tax liability in Washington each time they fly the aircraft into the state. Use tax is due on the full value of each monthly lease payment.

The fact that the primary property location during the 24-month period is located outside Washington does not affect the lessee's liability for use tax.

The measure of the use tax for each monthly period is the \$10,000 lease payment, regardless of the amount of time each month that the airplane is within Washington. Because no retail sales or use tax is legally imposed or has been paid, there is no credit available to ThomCorp under RCW 82.12.035 for taxes paid to another taxing jurisdiction.

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