Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

THIS DRAFT ETA IS TO BE USED SOLELY FOR DISCUSSION PURPOSES. UNDER NO CIRCUMSTANCES IS THIS DRAFT ETA TO BE USED TO DETERMINE TAX LIABILITY OR ELIGIBILITY FOR A TAX DEDUCTION, EXEMPTION, OR CREDIT.

ETA 3166. 201X Issue Date:

5% Substantial Underpayment Penalty May Apply to Non-Qualifying Purchases under the Deferral Programs

Purpose

This excise tax advisory (ETA) clarifies when the 5% substantial underpayment penalty imposed by RCW 82.32.090(2) applies to tax assessed on purchases made under the following Washington retail sales and use tax deferral programs:

- High Unemployment Counties under chapter 82.60 RCW;
- High Technology under chapter 82.63 RCW;
- Fruit and Vegetable Processors under chapter 82.74 RCW;
- Biotech Manufacturing under chapter 82.75 RCW; and
- Corporate Headquarters under chapter 82.82 RCW.

When will the 5% substantial underpayment penalty apply?

Any taxpayer that believes it may qualify for a deferral program must apply for a deferral certificate, under which the taxpayer may make qualifying purchases without paying retail sales or use tax. When the investment project is completed, the Department performs audit examinations of purchases made with deferral certificates. If the Department determines that a business underpaid its taxes by using a deferral certificate on non-qualifying purchases, the Department will issue a tax assessment for the deficiency. The 5% substantial underpayment penalty may be imposed on the assessment for non-qualifying purchases if the taxes due are determined to be substantially underpaid.

What does "substantially underpaid" mean?

Under RCW 82.32.090(2) "substantially underpaid" means:

- Less than 80% of the amount of tax determined to be due was paid; and
- The amount of underpayment is at least $1,000.

The amount of tax determined to be due includes <u>those</u> tax types that are the subject of the audit examination and that are due for the entire period of time covered by the audit examination. See WAC 458-20-228, Returns, payments, penalties, extensions, interest, stays of collection. See also ETA 3114. 2016, Substantial underpayment penalty.

How do I determine what qualifying purchases are?

Each deferral statute provides guidelines to identify qualifying purchases.

- For example, to receive the retail sales and use tax deferral under the High Unemployment Counties deferral provided in chapter 82.60 RCW, a person must be engaged in a manufacturing or research and development activity in a high unemployment county or community empowerment zone.

  Qualifying purchases typically consist of:
  - Machinery and equipment;
  - Computers and software;
  - Data processing equipment;
  - Laboratory equipment;
  - Manufacturing components such as belts, pulleys, shafts, and moving parts;
  - Molds, tools, and dies;
  - Operating structures; and
  - All equipment used to control or operate the machinery.

Non-qualifying purchases are those purchases made using a deferral certificate that do not qualify for the deferral. Generally, they are purchases that are not integral or necessary to the qualifying activity.

- For example, in the High Unemployment Counties deferral example, if the person uses a portion of its facility for marketing efforts, the purchases made to construct the portion of the building used for the marketing efforts are non-qualifying purchases.

When will the 5% substantial underpayment penalty not apply?

The 5% substantial underpayment penalty will not apply to taxes that were properly deferred, but that must be repaid because the taxpayer ceased using the investment project for a qualifying purpose before the expiration of the deferral period.

*****