State of Washington Department of Revenue

Excise Tax Advisory

Excise Tax Advisories (ETA) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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This ETA is cancelled effective February 28, 2007

CONDITIONS UNDER WHICH A CONTRACTOR-OWNER RELATIONSHIP EXISTS

Issued July 31, 1974

Where a contractor's workmen are placed on a building owner's payroll, but the contractor at all times retains the right to supervise, hire, and fire such workmen, are the business and occupation tax and the retail sales tax due on the value of the construction labor?

RCW 82.04.050 defines "sale at retail" or "retail sale" to include

> . . . the . . . charge made . . . for labor and services rendered in respect to . . . the constructing . . . of new . . . buildings or other structures under, upon, or above real property of or for consumers, . . .

The taxpayer, a general contractor, contracted to erect a building. The owner acted as its own contractor, and the contractor's workmen were placed on the owner's payroll. The owner made all workmen payroll reports directly to federal, state and local agencies. The responsibility for payment of the performance bond was the owner's.

The Department held that the owner's activities were not sufficient to create an employer-employee relationship between owner and workmen, or between owner and contractor. The position of the contractor was that he had been employed in a supervisory capacity only, within the meaning of published Rule 105.

The Department's policy is to examine the conduct of the parties and the agreement between them to determine whether an employer-employee relationship exists.

ETBS have been made Excise Tax Advisories, and have retained their old number. Advisories with a 2 (plus three digits) are new advisories, ETBs that have been revised and readopted after review under the Department's regulatory improvement program, or advisories that have been revised and/or readopted.

Please direct comments to:
Department of Revenue
Legislation & Policy Division
P O Box 47467
Olympia, Washington 98504-7467
(360) 753-4161 eta@DOR.wa.gov

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In this case, the contract referred to the parties as owner and contractor. No payment was to be made by the owner without the authorization of the contractor. The contractor at all times retained the right to supervise, hire and fire the workmen. The contractor was to make up any delinquent payments of the owner, and then to charge the owner therefor. The owner also agreed to indemnify the contractor for any sales tax found to be due on the labor. The employees working on the job had previously been employees of the contractor, and continued to be employees of the contractor subsequent to this job.

The Department held that under the above conditions the contractor-owner relationship existed, and that the business and occupation tax and the retail sales tax were therefore due on the value of the construction labor.