



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 They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

NUMBER: 489.04.170

CONVERSION DATE: July 1, 1998

This ETA is cancelled effective December 29, 2006

LESSEE AS SPECULATIVE BUILDER

Issued July 31, 1974

Is a lessee who constructs a building on property to which he holds a thirty year lease a "consumer", and therefore taxable as a speculative builder?

RCW 82.04.190(4) defines a "consumer" as:

Any person who is /a/. . . lessee . . . to . . . real or personal property which is being constructed, . . . improved, . . . or otherwise altered by a person engaged in business, . . .

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

. . . the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following: . . . (b) the constructing, . . . of new . . . buildings or other structures under, upon, or above real property of or for consumers, . . .

The taxpayer corporation constructed a building on property to which it held a 30-year lease. As a ". . . lessee . . . to . . . real . . . property which [was] being constructed, . . . improved, . . . by a person engaged in business; . . .", the taxpayer was clearly a consumer within the meaning of RCW 82.04.190(4). Therefore, the sale of materials and charges for labor or services used by the taxpayer in constructing the building were retail sales within the meaning of RCW 82.04.050, and were taxable as such. In effect, the taxpayer was taxable as a speculative builder.

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.

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