



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 They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.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: 511.14.145

CONVERSION DATE: July 1, 1998

This ETA is cancelled effective March 28, 2008.

WAREHOUSE AS RETAIL OUTLET FOR CITY/COUNTY SALES TAX

Issued March 30, 1978

RCW 82.14.020(1) provides that for purposes of city or county sales tax a sale of property is deemed to occur "at the retail outlet at or from which delivery is made to the consumer". WAC 458-20-145 provides that "the origin of the goods determines the local tax".

Some merchants take orders at one location in Washington and make delivery from another location in the state, in which case the department has uniformly held that it is the location from which the goods are delivered which determines the local jurisdiction entitled to the tax, and the place where the order is taken is disregarded.

At the time of promulgation and adoption of WAC 458-20-145, the Department gave consideration to whether it could, by rule, impute a warehouse delivery to an order taking location on some sort of constructive delivery theory, but it was concluded that the statutory language was clear and unambiguous, requiring that we look to the place from which delivery actually was made to determine the applicable local tax. In reaching this conclusion the Department followed the reasoning and decision of the court in *Standard Oil Co. v State*, 57 W2d 56 (1960). The question before the court in that case was whether bulk plants (consisting of storage and warehouse facilities for filling tank trucks) were "retail stores or outlets" for purposes of the wholesaling functions tax in view of the fact that

Very few sales were made at the bulk plants, and customers were not encouraged to visit the plants. Deliveries were made by tank trucks belonging to the plaintiff, and a sale was considered completed at the time of delivery.

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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The taxpayer in the that case contended that "establishments which sell in large bulk quantities for business uses" -- its bulk plants -- are not retail stores or outlets. The court ruled otherwise, holding that the bulk plants were places from which retail sales here made and so were retail outlets", to the extent of retail sales made therefrom.

As to local sales taxes, the legislature could specify local tax jurisdiction to be determined by any number of things -- the place of the order taking, the place to which goods are delivered, the principal place of business of the retailer, or some other place in some way related to the transaction -- but it elected to specify that the place from which delivery is made is determinative.

The Washington State Board of Tax Appeals has held that the Department of Revenue is in error on this point, holding that, where delivery is from a warehouse, the place where the customer ordered and paid for the goods is the place of tax situs for local sales tax purposes. *Allied Stores Corporation v Department of Revenue*, Docket No. 14780 (informal), March 17, 1978.

The Department has not acquiesced in the Board's decision, except for the specific tax assessment and tax period involved in Docket 14780, either for subsequent tax periods as to the appellant taxpayer or for any other taxpayers for any period.

Accordingly, Rule 145 will continue to be applied for local tax purposes, such that, where goods are delivered to a Washington customer from a place in Washington, "the origin of the goods determines the local tax".