



STATE OF WASHINGTON

DEPARTMENT OF REVENUE

CANCELLATION OF INTERPRETIVE STATEMENTS

The Department of Revenue has cancelled the following excise tax advisories (ETAs).

ETA 17.04.170 Labor and services of a subcontractor This document explains that where a taxpayer furnishing and installing concrete forms and form supports is contractually responsible for the quality of the finished concrete work, the taxpayer is subject to the wholesaling B&O tax as a subcontractor and is not in the business of “furnishing scaffolding.” There is no need for this document.

ETA 46.04.170 Joint venture agreement: a prime contract or a subcontract. This document states a series of facts and concludes that a joint venture existed. However, the ETA does not state the criteria for determining if a joint venture exists. Numerous Determinations have addressed the criteria to be treated as a joint venture. See, e.g. : Det. No. 87-93, 2 WTD 411, 416 (1987); Det. No. 88-14, 5 WTD 19, 24 (1988); Det. No. 88-155, 5 WTD 179 (1988); Det. No. 90-108, 9 WTD 231 (1990); Det. No. 98- 8, 17 WTD 236 (1998); Det. No. 98-214, 19 WTD 201 (2000); and Det. No. 05-0304, 26 WTD 021, (2006).

ETA 82.04.105 Contractor distinguished from an employee. This document addresses whether a contract logger is an employee or a contractor working on a cost plus contract. The ETA cites outdated language from a previous version of WAC 458-20-105 (Employees distinguished from persons engaging in business) as the basis for finding that the contract logger was an independent contractor. The information in the current WAC 458-20-105 provides more complete guidance for determining whether a person is an independent contractor or employee.

ETA 84.08.190 Capehart construction contracts. This document explains that amounts a taxpayer received from a Capehart construction contract with a private corporation are subject to retail sales tax, noting that this position was affirmed by *Murray v. State*, 62 Wn.2d 619, 384 P.2d 337 (1963). This issue is adequately addressed in Det 01-129, 21 WTD 031.

ETA 131.04.170 Construction company as agent for owner. This document addresses a situation where a taxpayer was hired to perform all construction work the owner might request over a three-year period. The owner deposited monies into special accounts, from which the taxpayer alone was authorized to make withdrawals to purchase materials and labor. The ETA explains that amounts paid by the owner to the taxpayer were a retail sale under RCW 82.04.050 (definition of “retail sale”), and only those amounts for purchases of materials and subcontract labor in the name of and for the account of the owner were excludable from tax. While the result of the ETA may be correct, it does not recognize or address RCW 82.04.051 (“services in respect to” constructing).

ETA 141.04.109 Finance reserve credits and gross income of the business. This document explains that amounts a vendor receives from a financial institution for arranging financing in connection with the

vendor's sales is subject to service B&O tax. This issue is adequately addressed in Det. No. 90-205, 11 WTD 55 (1990).

ETA 163.04.08.107/247/250 Core deposits and credits - parts returned to wholesalers. This document explains the tax treatment of core deposits and credits involving automobile parts such as starters. This subject is fully addressed in WAC 458-20-272 (Tire fee--Core deposits or credits).

ETA 216.08.113 Chemicals and other articles used in purifying water. This document explains that chlorine and other chemicals added to water and that become a component of the product sold may be purchased without payment of tax, citing RCW 82.04.050 (definition of "retail sale"). It also explains that purchases of filters and screens are subject to sales tax. This document is not needed.

ETA 345.16.180 Agricultural commodities hauling classified within motor transportation business. This document explains that a person transporting agricultural commodities by motor vehicle is subject to the public utility tax (in this case the motor transportation classification). This document is not needed.

ETA 347.16.180 Federal government contractors hauling out-of-state goods. This document explains that income received by persons hauling U.S. Mail between points within the state is subject to the public utility, while income for hauling mail across Washington's state lines is exempt. This information is both not needed and incomplete. There is nothing unique about the taxation of for-hire motor carriers hauling mail vs. any other property. WAC 458-20-179 (Public utility tax) and ETA 2006.16.179 (Taxability of air transportation and other activities performed with aircraft) both explain that federal law exempts from state taxation the transportation of mail by air.

ETA 486.04.172 Moving a structure (bridge) as a retail sale. This document states that a bridge is a structure, and charges for moving an existing structure (in this case a bridge) is a retail sale under RCW 82.04.050(2)(d). This document is not needed.

ETA 488.04.172/105 Conditions under which a contractor-owner relationship exists. This document addresses the situation where a contractor and an owner enter into an agreement to transfer employees from the contractor to the owner during the period of construction, and when the construction was completed transfer the employees back to the contractor. The ETA explains that it is the Department's position to examine the conduct of the parties and the agreement between them to determine whether an employer-employee relationship exists. In this case, the Department held that the amounts paid to the employees were part of the measure of tax for the construction project. While the conclusion is correct, the ETA doesn't consider the employer-employee relationship criteria of *City of Tacoma v. William Rogers Co.*, 148 Wn.2d 169, 178, 60 P.3d 79 (2002), nor those stated in WAC 458-20-105.

ETA 490.04.170/111 Interest on construction loan taxable as part of contract price. This document explains that amounts received by a contractor that are attributable to interest the contractor owes on a construction loan must be included in the measure of tax for the construction activity. The interest expense is a part of the contractor's cost of business. Such amounts are excluded from the measure of tax only if they meet the requirements of WAC 458-20-111 (Advances and reimbursements). This document is not needed.

Copies of the cancelled documents are available via the Internet at <http://www.dor.wa.gov/content/laws/eta/eta.aspx>, or a request for copies may be directed to:

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