



STATE OF WASHINGTON
DEPARTMENT OF REVENUE

CANCELLATION OF INTERPRETIVE STATEMENTS

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

ETA 35.04.189 Municipal income from meters in ferry terminal parking lot. This ETA explains that off street parking provided by cities is subject to retailing B&O tax and retail sales tax. This subject is adequately addressed in WAC 458-20-189, with subsection (3)(c) explaining that on-street parking is exempt and subsection (4)(a) (v) explaining that income from off-street parking is a retail sale.

ETA 48.04.114 Exemption of dues from business and occupation tax. This ETA explains that when an organization receives dues that are graduated based on the income of the member, the dues are not entitled to the deduction under RCW 82.04.4282. This ETA is based on an earlier version of RCW 82.04.4282 and does not consider the effect of the current statutory language on the facts involved. See WAC 458-20-183.

ETA 91.08.166 Lease for the purpose of releasing. This ETA explains that the lease or purchase of tangible personal property, in this case a ship used as a floating hotel, to be used in providing lodging services is subject to retail sales tax. See *Black v. State*, 67 Wn.2d 97 (1965). A lodging provider's responsibility to pay retail sales or use tax on tangible personal property used in providing lodging services is adequately addressed in WAC 458-20-166.

ETA 132.08.197 Sales tax liability of seller on buyer's refusal to pay. This ETA addresses a scenario where a buyer refused to pay retail sales tax to the seller because of a contract disagreement. The seller asked the Department to relieve the seller from its statutory obligation to collect the sales tax, and instead pursue the buyer for the tax. This document explains that the Department's general policy is not to relieve sellers of their statutory obligation to collect sales tax from the buyers, and that the Department chose not to pursue collection from the buyer. This ETA is no longer needed as RCW 82.08.050(10) explains that it is the Department's discretion whether or not to proceed directly against the buyer for collection of the sales tax.

ETA 145.04.193 Retention of title to secure payment of interstate sales of goods. This ETA explains that a sale occurs when the possession of property is transferred to the buyer even though the seller retains title to goods for the sole purpose of securing payment. This subject is adequately addressed in WAC 458-20-193.

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ETA 158.08.211 Deduction of finance charges from lease payments. This ETA explains that the full charge to a customer under a lease with option to purchase agreement is subject to retail sales tax, and that the finance or interest component factoring into the computation of this charge may not be deducted. While not specifically noted in the document, and notwithstanding the ETA's explanation that the taxpayer entered into the lease as a "method of financing the acquisition of needed equipment," the lease at issue is a "true" (or "operating") lease, as opposed to a "financing" lease. This document is no longer needed as the taxability of both true and financing leases is addressed in WAC 458-20-211.

ETA 254.04.180 Livery Service businesses. This ETA addresses a situation where a taxpayer provides limousine and ambulance services and also occasionally rents the vehicles without drivers. The document explains that the taxpayer is responsible for paying retail sale tax on its purchase or lease of the vehicles used in providing the limousine and ambulance services. It also explains that retail sales tax must be collected on the charge for the occasional bare rental of the vehicles. This document does not provide any information that is not otherwise available in other documents published by the Department.

ETA 310.32.101 Taxpayer has a duty to obtain knowledge of tax liability. This ETA correctly states the principle that taxpayers have the responsibility to know their obligations. This matter is adequately addressed in Chapter 82.32A RCW (Taxpayer Rights and Responsibilities) and numerous publications of the Department.

ETA 356.12.211 Use tax: Rentals put to personal use. This ETA explains that when a taxpayer both leases and personally uses tangible personal property (in this case a boat), the taxpayer is subject to retail sales or use tax on the value of the boat. The definition of "retail sale" in RCW 82.04.050 excludes sales of tangible personal property only if the property is not put to intervening use by the purchaser. There is no need for this document as this issue is a straightforward application of law.

ETA 357.04.211 Bailments: Handling and cleaning charges. This ETA addresses a situation where a taxpayer charges handling fees while storing films for a customer. As a part of the handling services, the film was inspected and, when needed, cleaned before being returned to storage. The ETA concludes that the handling services were subject to service and other activities B&O tax and were not a retail sale, on the basis that the cleaning was merely incidental to the handling and there was no separate charge for the cleaning. While the explanation that retail sales tax would not apply under this scenario is correct, there are insufficient facts to determine whether or not the handling was part of the warehousing activity, in which case the handling charges would be subject to the warehousing B&O tax as explained in WAC 458-20-182(3).

ETA 376.08.170 Speculative builders in joint ventures. This ETA addresses a situation where a taxpayer alleged that a joint venture existed between the taxpayer (a land developer), a speculative builder, and three contract vendors. The ETA explains that a taxpayer must prove the existence of a joint venture, and in this case did not do so. This document does not provide any needed guidance. Other documents issued by the Department (e.g., Det. 05-0104, 26 WTD 001, and Det. 99-176, 19 WTD 456) provide more complete guidance on this subject, including recognition of the "common law" principles expressed by Washington's courts.

ETA 387.08.156 Title insurance companies – retail sales tax liability on supplies. This ETA states that title insurers must pay retail sales tax on their purchase of supplies. There is no need for this

document as WAC 458-20-156 explains that retail sales tax applies to purchases of supplies by abstract, title insurance, and escrow businesses.

ETA 432.04.147 Sales tax: Steno services as retail sales. This ETA explains that where a business employed stenographers who performed mechanical services related to the production of manuals to be sold to customers, the charges associated with the stenographers' activities are included in the measure of tax for the sale of the manuals. It also explains that when these stenographers separately perform general secretarial duties, the charges to customers are subject to service and other activities B&O tax. There is no need for this document as this issue is a straightforward application of law.

ETA 448.04.193 Domestic international sales corporations (DISC). This ETA addresses the taxation of DISCs. DISCs were a status under the Internal Revenue Code and are no longer authorized. This ETA is obsolete.

ETA 558.04.193 Foreign sales corporations (FSC). This ETA addresses the taxation of foreign sales corporations (FSCs). FSCs were a status under the Internal Revenue Code and are no longer authorized. This ETA is obsolete.

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

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