

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 They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.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: 2008.08.12.178

Issue Date: June 5, 2002

This ETA is cancelled effective February 2, 2009 and reissued under the 3000 series.

See ETA 3001 for a cross-reference to the new series.

Deferred sales tax

This excise tax advisory explains the difference between deferred sales tax and use tax. It also discusses the circumstances under which a person may owe deferred sales tax and how to report the tax on the Combined Excise Tax Return.

The retail sales tax is imposed on persons who purchase nonexempt items of tangible personal property within the state as consumers. Sellers who make retail sales in the state are required to collect the retail sales tax from buyers and remit the tax to the Department. Any seller required to collect retail sales tax who fails to do so is liable for the full amount of the uncollected tax. The retail sales tax is measured by the selling price of the item sold. The selling price includes any freight or handling charges imposed by the seller regardless of whether such charges are separately stated in the sales contract or sales invoice.

Generally, there are two situations where a seller may be relieved of the duty to collect retail sales tax:

Situation 1: The seller receives a properly documented claim for tax exemption from the buyer; or

Situation 2: The seller receives a properly executed resale certificate from a buyer who normally engages in both consuming and reselling nonexempt items of tangible personal property, and the buyer cannot determine at the time of purchase whether the property will be consumed or resold.

If the seller fails to collect retail sales tax that is later determined to be due, the Department may proceed directly against the buyer to collect the tax. The retail sales tax may become due from the buyer under Situation 1 if events occurring after the sale fail to meet the requirements for tax exemption. In Situation 2, the buyer is required to maintain records of the items consumed and remit the retail sales tax directly to the Department. The Department sometimes refers to the sales tax that may become due from the buyers in both situations as "deferred sales tax." The tax is deferred because at the time of sale the facts

Advisories numbered as 2 plus three digits (e.g. 2002.16.179) are advisories issued on or after July 2, 1998.

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giving rise to the tax liability are not yet known. Deferred sales tax does not refer to sales tax that is properly due at the time of sale that the seller mistakenly or purposefully fails to collect.

Deferred sales tax is not the same as use tax. Use tax is imposed on the use by a consumer of nonexempt tangible personal property within the state. The tax does not apply when the acquisition or sale of the property has been previously subjected to the retail sales tax. "Use" for this purpose means the first act within the state by which a person takes or assumes dominion and control over an item of tangible personal property as a consumer, and includes installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within the state. RCW 82.12.010. The use tax is based on the value of property at the time of first taxable use within the state. Normally, the value of an item of property acquired by purchase is the amount paid by the buyer. Effective June 1, 2002, this value includes any freight, delivery, or other like transportation charge that is paid or given to the seller. (Chapter 367, Laws of 2002.)

The following examples illustrate the difference between deferred sales tax and use tax:

Example A (deferred sales tax): A buyer provides a resale certificate to a seller under Situation 2 and later withdraws an item from inventory for use in the buyer's business. The buyer is liable for retail sales tax on the selling price paid for the item when the item is withdrawn from inventory. The sales tax applies regardless of whether the item withdrawn from inventory is used inside or outside the state. The place of sale determines the local sales tax rate (See also WAC 458-20-145, Local sales and use tax.)

Example B (use tax): The buyer in Example A acquires inventory under circumstances where the seller does not have a duty to collect tax in the first instance (for example, the seller is not required to register with the Department). The buyer later withdraws several items from inventory for use within the state. In this example, the buyer is liable for use tax based on the value of the withdrawn items at the time they are first used in the state. The location where the items are withdrawn from inventory for consumer use within the state determines the local use tax rate. If the items are immediately sent outside the state for use, no tax is due because storage preparatory to use outside the state is not a taxable use.

The Combined Excise Tax Return does not have a special line for reporting deferred or unpaid sales taxes on purchases. Consequently, taxpayers should report these amounts on the use tax line of the return. The retail sales tax line on the return is designed for persons who make retail sales (sellers) and not for persons making taxable purchases. Therefore, in most instances the total sales subject to retail sales tax must agree with total retail sales reported for business and occupation tax purposes. If sales reported for sales tax and B&O tax purposes do not agree the return will be out of balance and may generate an error notice from the Department. The local tax component of deferred or unpaid sales tax

should be reported in the local use tax area of the return using the appropriate location code corresponding to the place of sale determined.