



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 They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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CONVERSION DATE: July 1, 1998

**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.**

PERSONS SERVING AS EMPLOYEE AND ENGAGING IN BUSINESS

Issued September 2, 1966

Where a person is both an employee and an independent agent is his taxable status determined by his primary activity?

The taxpayer served as a salaried branch manager of an insurance firm. He also sold insurance policies to personal clients. The taxpayer contended that the commissions he earned from selling policies were not subject to the business tax because his primary function was as branch manager.

RCW 82.04.360 exempts employees from the business tax but only to the extent of their capacity as an employee. Rule 105 provides that one who is acting in an independent capacity is engaging in business and is subject to the business tax. The taxpayer in selling insurance policies was acting independently for his own benefit. The selling activity was separate and apart from his management functions. The taxpayer was held subject to business tax on the commissions earned from selling insurance policies. (Order)

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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