



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 They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

NUMBER: 401.04.135 *Repealed June 17, 2000*

CONVERSION DATE: July 1, 1998

## OYSTER STRING PRODUCTION

Issued July 3, 1970

*Repealed June 17, 2000*

What tax is due upon the production of oyster strings and upon their use by the taxpayer in the course of business?

The taxpayer produced oyster strings from shells and wire. Oyster shells were strung along the strings to enable the seed to be more readily handled following the setting of the oyster spat. The taxpayer explained that the oyster strings were not marketed but were consumed in the oyster raising process. He contended that they were merely a part of the oyster raising process and were neither "manufactured" nor "extracted" and accordingly, that the use tax and business and occupation tax were not due.

The department concluded that both the use tax and the business and occupation tax under the Manufacturing classification were due upon the production and use of the oyster strings. The production of oyster strings constitutes "manufacturing" within RCW 82.04.120. This section defines "to manufacture" as embracing

. . . all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use . . .

The department feels that the production of oyster strings from shells and wire results in the creation of "new, different, or useful" articles of tangible personal property as contemplated by this statute. It seems obvious that until the wire and shells are assembled neither has much, if any, utility for this seed cultching process. Thus, oyster strings are clearly "new and different" articles of tangible personal property and also are more "useful" than the individual components.

***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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Additionally, since the taxpayer consumes these manufactured oyster strings in the conduct of his business, the use tax is due under RCW 82.12.020 which provides as follows:

There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any article of tangible personal property . . . manufactured by the person so using the same.

It appears to be the intent of the law to apply both the use and the business and occupation tax since the taxes apply specifically to articles subjected to "commercial or industrial use," a term defined by RCW 82.04.130 to include "any use as a consumer."