



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 They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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**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.**

AMOUNTS AWARDED FOR COSTS NOT INCLUDED IN THE CONTRACT

Issued July 24, 1970

Are amounts awarded for costs not included in the contract taxable as contract income?

The taxpayer objected to a retail sales tax and Retailing business tax assessment upon amounts received through a court action for contract completion costs. The taxpayer argued that the amount subjected to tax by the auditor was received as an award for damages and thus was not earned from the performance of a contract.

The department affirmed the auditor's assessment in holding that the amounts awarded were income for labor and services and taxable as a retail sale, RCW 82.04.050. This section defines "retail sale" as

. . . the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to . . . (b) the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers . . .

The measure of a "retail sale" is the "selling price," a term defined by RCW 82.08.010(1) to mean

. . . the consideration, whether money, credits, rights, or other property, expressed in the terms of money paid or delivered by a buyer to a seller, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest,

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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discount, delivery costs, taxes, or any other expenses whatsoever paid or accrued and without any deduction on account of losses . . .

Since the basis for the taxpayer's claim was the performance of additional work not called for by the original contract, it is clear that the additional income resulting from the court award must be treated for excise tax purposes in the same manner as income from the original contract. In the department's opinion, such an award covers reimbursement for construction costs and expenses (irrespective of whether labeled "damages" or not) incurred in addition to those originally contemplated. The award falls within the statutory language quoted above and therefore is taxable as a retail sale.