



State of Washington  
Department of Revenue

# Excise Tax Advisory

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 They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.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

## USE TAX IMPOSED WHERE PROPERTY NOT EXCLUSIVELY HELD FOR RESALE

Issued April 30, 1971

Can items of tangible personal property which are recorded as capital assets and depreciated for federal tax purposes enjoy the statutory exemption from use tax afforded to property held exclusively for resale?

The taxpayer, a shipbuilding corporation, engaged in the manufacture and sale of ships and dry-docks, substantially used a charter boat and floating dry-dock for demonstration and testing purposes prior to its sale.

The taxpayer objected to the imposition of the use tax on grounds that it had received no income from such use.

RCW 82.12.020 imposes the use tax upon:

. . . the privilege of using within this state as a consumer any article of tangible personal property . . .

RCW 82.04.050 defines "retail sale" as:

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***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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. . . every sale of tangible personal property . . . other than a sale to a person who (a) purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person. (Emphasis added.)

The legislature clearly intended to allow an exemption in cases of "purchases for resale" only where there is no "intervening use."

The Department of Revenue held that capitalization and depreciation of the equipment constituted evidence of the taxpayer's substantial intervening use of the equipment as a "consumer" prior to sale. Such intervening use subjected the equipment to the use tax and it was held to be immaterial that the equipment did not produce income during its use and was subsequently sold.