



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 They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.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

TAXABILITY OF HIGHWAY CONSTRUCTION CONTRACT PROJECTS ADMINISTERED BY WASHINGTON STATE DEPARTMENT OF HIGHWAYS

Issued August 11, 1971

The term "construction" as used herein means the building, repairing, or improving of a publicly owned highway, street, place, or road as defined in published Rule 171.

As of July 1, 1971 in implementation of Chapter 299, Laws of 1971, Ex. Sess., state retail sales tax shall be imposed on state highway construction contracts as follows:

1. Where title to the land upon which the facility is being constructed vests in the state of Washington, the construction contract amounts to a sale at retail and retail sales tax shall be imposed upon the full contract price and separately billed.

Sales to prime contractors and subcontractors of materials which become a component part of the facility being constructed are for resale and are not subject to the sales tax where the proper resale certificate is presented at time of purchase.

The retail sales tax applies upon sales to contractors of machinery, equipment, and consumable supplies purchased for the contractor's own use.

2. The tax liability outlined in #1 above shall also apply to construction of highways under the following circumstances:

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- a. Construction across state owned school trust lands.
- b. Construction across railroad owned property.
- c. Construction of service or frontage roads on limited access facilities where they fall within the state right of way of the main highway facility.
- d. Construction of service or frontage roads falling outside the main right of way but where the state has acquired substantially all of the additional right of way required therefor.
- e. Construction of cul-de-sacs within the right of way of the main highway facility.
- f. Construction of cul-de-sacs outside the main right of way where the state has acquired substantially all of the additional right of way required therefor.
- g. Construction across federally owned lands where the federal government has granted the state an easement for the right of way.
- h. Construction across lands acquired for the state by the federal government in federal court proceedings after transfer of title is accomplished from the federal government to the state.

3. Where the highway facility is being constructed upon land, the title to which does not vest in the state, contractors are taxable under the Public Road Construction classification upon the total contract price. The retail sales tax does not apply upon any portion of the charge made by such contractors.

The retail sales tax or use tax applies upon the sale to or use by such contractors of all materials, equipment and supplies consumed in the performance of such contracts.

4. The tax liability outlined in #3 above shall apply to the construction of highways under the following circumstances:

- a. Construction upon city streets where title to the streets remains in the city though the state may let and administer the contract.
- b. Construction upon county roads under like circumstances.
- c. Construction of service or frontage roads over city streets or county roads, but where the substantial portion of the right of way remains in the city or county.
- d. Construction of cul-de-sacs under like circumstances.
- e. Construction beyond the limits of limited access facilities for purposes of bringing existing city streets or county roads up to higher standards at interchanges, the streets and roads remaining substantially in the ownership of the cities or counties.
- f. Construction across federally owned land where the state has only a special use permit or temporary license to enter and construct.

g. Construction upon land acquired for the state by the federal government in federal court proceedings but before transfer of title to the state.

5. Prime contractors should give resale certificates to their subcontractors and the latter will not collect sales tax on their contract price. Correspondingly, the subcontractors may purchase materials which become components of the job without paying sales or use tax by furnishing resale certificates to their suppliers.

6. On construction contracts let prior to July 1, 1971 but completed thereafter, contractors shall segregate work done and materials used through June 30, 1971 from work done and materials used thereafter. Contract charges for the former are taxable under published Rule 171, whereas contract charges for the latter are taxable as outlined in this bulletin.

Where contractors have paid sales or use tax on materials put into a construction project after June 30, 1971, they may take a credit in this amount by indicating on the reverse side of their tax returns, "purchases for resale on which tax was paid at source".