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 They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.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

TAXABLE TRANSFERS OF CAPITAL ASSETS

Issued October 15, 1971

Are cash purchases of capital assets subject to retail sales tax and/or use tax where the purchase and sale agreement provides for the future issuance of common stock in the purchasing organization to the members of the purchased organization?

Taxpayer was a cooperative organization which purchased the total capital assets of another co-op for cash. Members of the purchased co-op were to receive voting stock subsequent to the purchase and after a brief trial period of operation for the purchasing co-op.

Taxpayer objected to the imposition of retail sales tax on the transaction, arguing that since the members of the purchased co-op were to be issued common voting stock, they retained control of and beneficial interest in the assets so as to qualify the transaction for retail sales tax exemption provided by Rule 106.

The department ruled that the assets were being purchased outright for cash, and the transaction did not contemplate the unbroken and continuing control of and beneficial interest in the assets by former members of the purchased co-op.

Rule 106 provides:

> A transfer of the capital assets of a business is not deemed taxable when the control of and beneficial interest in the subject matter of the transfer remains, in whole or in part, in

the same individuals or entity after completion, provided the transfer results in an adjustment of the beneficial interest in the business. The tax will not apply in the following instances:

. . .

2. Transfers of capital assets by an individual or by a partnership to a corporation, or by a corporation to another corporation in exchange for capital stock therein.

The sale was for cash, and it was taxable as a "sale at retail" notwithstanding subsequent attempts to satisfy the specific provisions of Rule 106.

Where former members of the purchased co-op were completely divested of ownership and control of assets (for any period of time for any reason) the provisions of Rule 106 are not satisfied.

Cash purchases of capital assets of a corporation are subject to retail sales tax or use tax.