



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 They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

NUMBER: 449.12.170 *Repealed June 30, 2000*

CONVERSION DATE: July 1, 1998

TURNKEY PROJECTS SOLD TO HOUSING AUTHORITIES

Issued July 3, 1972

Repealed June 30, 2000

Are sales of housing developments to city housing authorities under a "contract of sale" taxable as retail sales or is the developer taxable as a speculative builder?

Rule 170 provides that

. . . when a speculative builder sells or contracts to sell property upon which he is presently constructing a building, all construction done subsequent to the date of such sale or contract constitutes a retail sale . . .

The same rule defines "speculative builder" as

. . . one who constructs buildings for sale or rental upon real estate owned by him . . .

and the terms "sells" or "contracts to sell" are defined to include

. . . any agreement whereby an immediate right to possession or title vests in the purchaser.

RCW 82.04.050 defines the term "retail sale" to include

. . . the constructing . . . of new or existing buildings or other structures under, upon, or above real property of or for consumers . . .

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.

Please direct comments to:
Department of Revenue
Legislation & Policy Division
P O Box 47467
Olympia, Washington 98504-7467
(360) 753-4161 eta@DOR.wa.gov

To inquire about the availability of receiving this document in an alternate format for the visually impaired or language other than English, please call (360)753-3217. Teletype (TTY) users please call 1-800-451-7985.

and the term "consumer" is defined by RCW 82.04.190, in pertinent part, to mean

- (4) Any person who is an owner, lessee or has the right of possession to . . . real or personal property which is being constructed, repaired, improved, cleaned, imprinted or otherwise altered . . .

In the consolidated cases, *Rigby vs. State* and *Century Builders v. State*, 49 Wn. 2d 707, the Supreme Court considered the application of these statutes to transactions in which right to possession of realty and construction thereon is given at the time of closing, and ruled that such transactions are not retail sales because the purchasers were not consumers, by reason of having no entitlement to possession during the construction.

Opinions have been issued by the Department that so-called "turnkey" projects sold to housing authorities constitute "contracts to sell" and that the full contract price is taxable as a retail sale because no construction takes place until after the contract is signed. The conclusion expressed in those opinion letters has been challenged and, accordingly, the Department has reviewed the entire matter on the basis of projects recently audited by the Department's Field Operations Division. We find that typically the "contract of sale" contains a provision specifying that

Possession shall be delivered to the purchaser at the time of closing and the Purchaser shall have the right of occupancy from that time.

It is clear that under the Department's rule, the statutes, and the *Rigby-Century* cases, sales of turnkey projects containing language to this effect do not constitute retail sales. Instead, the owner of the real estate during construction is the consumer (he is a speculative builder under Rule 170) and is liable for sales or use tax on all materials and contracts for construction labor or services purchased. Prior opinions issued to the contrary are hereby overruled and declared to be in error. However, in the event that a turnkey contract may have been entered into (a) prior to July 10, 1972, and (b) in reliance on the Department's earlier opinion letters, any additional tax asserted with respect to such a contract shall be limited to that amount which would be due if the contract were treated as constituting a retail sale.

Any turnkey contracts with housing authorities entered into on or after July 10, 1972, will be taxable as specified in this excise tax bulletin.