



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 They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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NEXUS PRESUMPTION

Issued August 5, 1977

REPEALED 9/14/2001

When there is sufficient nexus requiring payment of business and occupation tax on an initial sale of goods, does the Department of Revenue automatically tax a subsequent sale to the same customer that is unrelated to the first sale?

The taxpayer was a publishing company that sold books at retail in Washington. Its resident employees solicited sales on a commission basis. The company also sold subsequent supplements to its books. The customer decided whether to purchase the supplements upon receipt. The company paid a commission to the salesmen on the initial sale but it paid no commission to them on subsequent purchases by the customer. The Department of Revenue assessed a business and occupation tax upon the initial sales. It did not tax the subsequent supplement sales because such sales were factually established to be totally unrelated to the initial sales.

When an out-of-state company makes multiple sales to the same customer, and the Department of Revenue assesses business and occupation tax on the first sale because there is sufficient nexus (i.e. connection, tie, link), the Department will presume that a subsequent sale to the same customer is sufficiently related to the first sale to tax it as well. The taxpayer bears a heavy burden of proof to rebut the presumption. Norton v. Department of Revenue of Illinois, 95 L. Ed. 517 (1951).

In this determination, the taxpayer rebutted the factual presumption by showing the subsequent sales were totally unrelated to the initial sales by establishing the absence of a sales commission or consumer contact with the salesman.

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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