



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 They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.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

BANKRUPTCY LIQUIDATIONS: SALES AND USE TAX

Issued October 6, 1989

Is property acquired through a bankruptcy liquidation sale exempt from sales or use tax?

The retail sales tax or use tax applies in connection with bankruptcy liquidation sales and other transfers under the Federal Bankruptcy Code which are not otherwise tax exempt under RCW Title 82 (excise taxes). The Department of Revenue has followed the 9th Circuit Court of Appeals ruling in 1957 in California State Board of Equalization v. Goggin, 245 F.2d 44 (1957), (also known as Goggin II) that intergovernmental tax immunity prevented the state from collecting sales or use tax because it burdened the "essential processes" of the bankruptcy court. The U.S. Supreme Court recently ruled, "It is evident that whatever immunity the bankrupt estate once enjoyed from taxation on its operations has long since eroded and that there is now no constitutional impediment to the imposition of a sales tax or use tax on a liquidation sale." California State Board of Equalization v. Sierra Summit, Inc., 490 U.S.____ (1989).

For sales or other transactions occurring after October 6, 1989, bankruptcy trustees as agents of the debtor (or debtors in possession if applicable) will be required to collect and remit sales tax to the State of Washington on sales that are not otherwise exempt (this liability is as agent for the debtor, not personal liability). Transferees will be liable for use tax on property acquired and placed into use in Washington after October 6, 1989 if no retail sales tax was paid.

Transfers of property between the bankruptcy trustee and the original debtor are exempt. Transfers of personal property (inventory for sale) back to original vendors who hold security interests shall continue

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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to be exempt if the property is held for resale and there is no taxable use by the vendor. Debtors in possession under chapter 11 will continue to be required to pay any applicable taxes such as B&O taxes or

sales taxes which result from the continued operation of the business. All sales in bankruptcy are casual sales and not subject to the business and occupation tax except for the sales of inventory.