



# Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

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NUMBER: 3024.2009

ISSUE DATE: February 2, 2009

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## Public Works Contracts

**Background:** A percentage not to exceed five percent (5%) of the contract price will be withheld and placed in trust by the public body. RCW 60.28.010 and RCW 60.28.011. Any subcontractor, supplier, or government agency owed money from the project may file a Notice of Lien against the contract retainage within forty-five (45) days of completion of the contract work. Upon completion of the contract and receipt of a certificate from the Department certifying that no taxes or penalties are due, the disbursing officer will release and pay in full the amounts retained during the performance of the contract.

### **When is tax due on the retainage? -- At the time the retainage is withheld or at the time it is released to the contractor?**

When a contractor has performed the services necessary to entitle the contractor to a progress payment, the contractor has earned that progress payment. The retainage withheld by the public body is the property of the contractor and is held in trust to insure payment of the contractor's obligations. The business and occupation and retail sales taxes are due at the time the contractor receives the progress payment including any amount retained by the public body.

### **Should retail sales tax be included in retainage?**

No. As stated above, the contractor must report the retail sale of its services when it performs those services. The retainage applies only to the amounts that are due to the contractor. The retail sales tax paid on the contract is not the property of the contractor; rather, it is collected by the contractor and held in trust until paid to the Department. RCW 82.08.050. Retail sales tax is not subject to retainage and the public body must pay the full amount of retail sales tax to the contractor.

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All ETAs were cancelled on February 2, 2009 and those which had a continued use were rewritten and reissued using a new numbering system. The new ETAs are numbered using the following format 3nnn.yyyy. The Department of Revenue issued ETA 3001.2009 which includes a cross reference table showing the old and new ETA numbers for those ETAs that were rewritten.

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