



Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

NUMBER: 3061.2009

ISSUE DATE: February 2, 2009

Amounts Awarded for Costs Not Included in the Contract

Are amounts awarded for costs not included in the contract taxable as contract income?

The following analysis applies whether the amounts awarded are paid as the of the contract terms, settlement negotiations, or a damage award from arbitration, mediation or court action.

Such amounts awarded are income for labor and services and taxable as a retail sale, RCW 82.04.050. This section defines "retail sale" as

. . . the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to . . . (b) the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers . . .

The measure of a "retail sale" is the "selling price," a term defined by RCW 82.08.010(1) to mean prior to July 1, 2008:

. . . the consideration, except separately stated trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property, extended warranties, or services defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following: (a) The seller's cost of the property sold; (b) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller; (c) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges; (d) delivery charges; and (e) installation charges.

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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After June 30, 2008

total amount of consideration, except separately stated trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property, extended warranties, or services defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following: (i) The seller's cost of the property sold; (ii) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller; (iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges; (iv) delivery charges; and (v) installation charges.

Because these amounts are paid for the performance of additional work not called for by the original contract, the additional income is treated for excise tax purposes in the same manner as income from the original contract. Such an award covers reimbursement for construction costs and expenses (irrespective of whether labeled "damages" or not) incurred in addition to those originally contemplated.