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 They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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JOINT VENTURE AGREEMENT: A PRIME CONTRACT OR A SUBCONTRACT

Issued July 8, 1966

Is it necessary that every party to a contract be formally listed as a primary party to a bid or contract which the parties contemplate bidding upon and performing as a joint venture in order to avoid being taxed under the Wholesaling classification as a subcontractor?

The taxpayer, a contractor, and another contractor agreed at the time of the contract award that the contract work would be done as a joint venture and that each would put up one-half of the bond required. Only one bond was issued and it was in the name of the other contractor. It was agreed that the work would be done under the other contractor's name. Both he and the other contractor filed as a joint venture separate payroll reports with the Departments of Employment Security, Industrial Insurance, and the Internal Revenue. The Business Tax was also reported as a joint venture.

The taxpayer contended that the aforesaid evidenced an intent to conduct a joint venture to perform the contract work and stated that the contract, in fact, was awarded to the joint venture and not to the other contractor which then allegedly subcontracted to the joint venture. Therefore, the taxpayer took exception to the Business Tax under the Wholesaling classification which had been assessed against him on the ground that the joint venture was a subcontractor of the other contractor.

The Tax Commission held that the contract was performed in the first instance by the joint venture and sustained the taxpayer's exception. This conclusion was based on the fact that the joint venture was specifically formed to perform the contract work and this was done before any of the work required by the contract had been undertaken. Further the funds were handled as a joint venture rather than as the separate funds of the other contractor.

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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The Tax Commission noted that it is common practice for large contracts to be performed by a combine of joint venturers and to bid the contract in the name of only the principal or sponsoring members of a joint venture. Therefore, it is not necessary that every member of a joint venture be formally listed as a party to the bid or the contract if in fact it can be clearly shown that a joint venture agreement to perform the contract was entered into before the performance of the contract work was undertaken.