

# Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

ETA 3XXX.20XX

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**THIS DRAFT ETA IS TO BE USED SOLELY FOR DISCUSSION PURPOSES. UNDER NO CIRCUMSTANCES IS THIS DRAFT ETA TO BE USED TO DETERMINE TAX LIABILITY OR ELIGIBILITY FOR A TAX DEDUCTION, EXEMPTION, OR CREDIT.**

## Insurance Business Exemption

### Purpose

This ETA addresses the application of the exemption provided by RCW [82.04.320](#) (the “insurance business exemption”).

### Background

RCW 82.04.320(1) provides an exemption from business and occupation (B&O) tax to “any person in respect to insurance business upon which a tax based on gross premiums is paid to the state.”

In 1990, the Department published Determination 88-311A, 9 WTD 293. That Determination included analysis that was inconsistent with the plain language of RCW 82.04.320. The Department found that RCW 82.04.320 does not support the “functionally related” analysis that was applied in 9 WTD 293. As a result, the Department withdrew that determination from publication on October 2, 2019.

On October 2, 2019, the Department published interim guidance explaining the application of the insurance business exemption, given the withdrawal of 9 WTD 293. This ETA represents the Department’s final guidance on the application of the exemption. It follows the position provided in the 2019 interim guidance.

### Who May Claim the Insurance Business Exemption?

The exemption is limited to persons engaged in insurance business that receive gross income that is taxed under a gross premium tax paid to Washington.

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Questions? Complete the online form at <https://dor.wa.gov/contact/contact-form> or call 360-705-6705. If you want a binding ruling from the Department, complete the form at <https://dor.wa.gov/contact/request-tax-ruling>.

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The person claiming the exemption must show proof of payment of Washington premium tax with respect to the gross income the person is claiming to be exempt from B&O tax.

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**What Income is Exempt?**

The exemption only applies to amounts received in respect to insurance business upon which a gross premium tax is paid to Washington. Amounts received in respect to other activities are not exempt.

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**Insurance business**

The statute does not define the term “insurance business.” Determining whether a person’s activities are in respect to the insurance business is a fact-specific inquiry. The Department typically considers the following non-exclusive list of activities as directly relating to the insurance business:

- Inspecting, evaluating, and testing insured (or prospective insured) property for risk of fire and other property loss
- Loss prevention engineering
- Appraising insured property
- Setting rates for, and underwriting insurance policies
- Investigating claims
- Determining cause
- Recommending changes to prevent recurrence
- Negotiating settlements of such claims
- Defending contested claims
- Handling subrogation proceedings
- Making advance, partial, and final payments to the insured

The Department typically considers the following non-exclusive list of activities as not essential to or directly related to the insurance business:

- Human resources
- Information technology
- Legal, compliance, and regulatory affairs that are unrelated to the insurance business
- Data processing
- Accounting
- Janitorial services

Only income from insurance business activities may be eligible for the exemption. Whether an activity is “functionally related” to an insurance business is not pertinent to qualification for the RCW 82.04.320 exemption. Any published determination or Department guidance that relies on the withdrawn determination, 9 WTD 293, should be disregarded to the extent that it uses the “functionally

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related” analysis. For more detail, refer to ETA [3133.2019](#), *Withdrawal of Published Determinations*.

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**Exemption for  
certain eligible  
captive insurers**

RCW 82.04.320(5) provides that, if an eligible captive insurer affiliated with a public institution of higher education is exempt from paying premium tax under RCW 48.201.040, it is also exempt from B&O tax in respect to its insurance business. See RCW 48.201.020 for the definitions of “eligible captive insurer” and “public institution of higher education.”

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