

Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

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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.

Applicability of Leasehold Excise Tax and Retail Sales Tax to Leases of Dark Fiber from Public Owners

Purpose

The Department of Revenue is issuing this Excise Tax Advisory (“ETA”) to provide information about when the lease of dark fiber from public owners is subject to the Leasehold Excise Tax (“LET”).

This ETA is effective [effective date]. The Department will accept the prior reporting of a taxpayer if the taxpayer made a good faith effort to comply with its reporting requirements. The Department will not issue refunds for taxes validly paid.

This ETA supersedes any previous rulings or written reporting instructions provided to taxpayers that conflict with the guidance in this ETA.

Definitions

For the purposes of this ETA, the following definitions apply:

Competitive Telephone Services (CTS) is the provision by any person of telecommunications equipment or apparatus, or services related to the equipment or apparatus. RCW 82.04.065(5).

Telecommunications Services are services that transfer, convey or route voice, data, audio, video or any other information or signals to a point, or between or among points. RCW 82.04.065(27).

Dark fiber is installed fiber optic cabling that has not been “lit” with a laser and associated equipment. As sold, it does not transmit, convey or route signals. It includes providing access to an unlit fiber optic cable and the related services such as repair, installation, and maintenance. Often, a consumer leases some or all strands of the fiber optic cables and attaches its own equipment to light the fibers in order to provide bandwidth and services to its customers. For these reasons, dark fiber is considered a CTS, as defined in RCW 82.04.065(5), and not within the definition of a telecommunications service contained in RCW 82.04.065(27). See ETA 3171.

Leasehold interest means an interest in publicly-owned real or personal property via a lease, permit, license or any other written or verbal agreement between the public owner of the property and a person who would not be exempt from property

taxes if that person owned the right to possess and use the property. See RCW 82.29A.020(1)(a).

Leasehold Excise Tax (LET) is a tax on the act or privilege of occupying or using public property through a leasehold interest. The tax is in lieu of the property tax. RCW 82.29A.010 et seq.

Lease of Dark Fiber is Subject to LET

When a private lessee, such as a telecommunications company, leases dark fiber from a public owner (e.g., a Public Utility District), the private lessee possesses a leasehold interest in the dark fiber. The private lessee is granted possession and use of public personal property (the dark fiber), including the right to connect equipment to “light” the fiber optic cable. The right to “light” specific fiber optic strands to enable the transmission of voice and data communications provides the private lessee some identifiable dominion and control (possession) over a defined area. Therefore, the LET applies to the lease of dark fiber from a public owner to a private lessee. The public owner must collect LET from its lessee and remit it to the Department.

NOTE: If the lessee would otherwise be exempt from property tax on the dark fiber had it owned the dark fiber, there is no leasehold interest and the lease would not be subject to LET. For more information on LET exemptions, refer to WAC 458-29A-400.

Lease of Dark Fiber is Subject to Retail Sales Tax

As explained above, dark fiber is a CTS. Therefore, the sale or lease of dark fiber is subject to the retailing B&O tax and the seller/lessor must collect and remit the retail sales tax, unless an exemption applies. The LET on the lease of dark fiber is in addition to the retailing B&O and retail sales tax obligations. For more information on the taxation of dark fiber, see ETA 3171 – *Taxation of Dark Fiber (unlit fiber optic cable)* and ETA 3193 – *Sourcing Dark Fiber Sales*.
