

Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

ETA 3XXX.2021

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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.

Nonprofit Organizations Receiving Governmental Funds for Habitat Restoration Projects

Purpose & Scope

This Excise Tax Advisory (ETA) addresses the tax treatment of nonprofit organizations receiving governmental funds for habitat restoration projects.

This ETA does not address the following scenarios:

- (1) Salmon recovery grants eligible for the RCW 82.04.4339 deduction. See ETA XXXX for additional information on that deduction and the related retail sales tax exemption.
- (2) Restoration projects involving a federally recognized Indian Tribe, its enterprises, subsidiaries, or constituent parts may implicate federal law, and, accordingly, are specifically not addressed by this ETA. For further guidance with respect to such projects, you may request a [binding tax ruling](#).
- (3) Establishing or maintaining developed or landscaped areas – continue to refer to WAC 458-20-226 *Landscape and horticultural services*.
- (4) Projects for the Federal Government, or on federal lands. Refer to WAC 458-20-17001 *Government contracting*.

Definitions

For the purposes of this ETA the following terms apply:

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General tax information is available on our website at <https://dor.wa.gov>.

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

Habitat restoration projects renew, restore, or protect, -- by human intervention -- degraded, damaged, or destroyed ecosystems and habitats. Examples of these projects include, but are not limited to:

- Restoring a river delta by removing manmade obstacles or excessive erosion throughout the delta’s watershed;
- Eliminating invasive species to protect an endangered native population of plants;
- Elevating pedestrian trails throughout a park to ensure natural water flows and safe seasonal migrations of small animal species; and
- Demolishing levees along a stream to allow seasonal flooding into its associated watershed.

Habitat restoration projects do **not** include any project eligible for the salmon recovery grant deduction under RCW 82.04.4339. See ETA XXXX.

Governmental funds include disbursements from a governmental entity, commonly in the form of a grant, that place contractual obligations on the nonprofit recipient to construct or purchase tangible personal property, or alter or improve real property for a habitat restoration project. These funds include, but are not limited to, amounts provided to a nonprofit to coordinate, facilitate, or oversee the construction of, or purchase of tangible personal property for, a habitat restoration project as a prime contractor. Funds may be provided in advance of the particular project, or by reimbursing the organization for costs incurred during the course of the project.

Contractual obligations include legal requirements under a written or oral contract to fulfill a habitat restoration project.

Background

State, local, and federal governmental agencies often provide funding to nonprofit organizations for habitat restoration projects throughout Washington. These nonprofit organizations generally serve as a prime contractor and have contractual obligations to perform the specific services or purchases required to accomplish the project.

Retailing B&O and Retail Sales Tax Reporting

Retail sales are subject to the retailing business and occupation (B&O) tax and the retail sales tax. RCW 82.04.050, 82.04.250, 82.08.020. The measures of tax for the B&O and retail sales taxes are the gross income of the business and the selling price, respectively. RCW 82.04.080 and 82.08.010.

The term “retail sale” applies to sales of tangible personal property and a variety of services such as the altering or improving of real or personal property of, or for, consumers. It also includes the clearing of land and the moving of earth. See RCW 82.04.050.

A nonprofit organization conducting habitat restoration projects will typically be providing services that involve altering or improving real or tangible personal property of, or for, a governmental entity (consumer). Thus, unless there is a specific tax exemption or deduction that applies, or it can otherwise be shown that no retail sale has occurred, the nonprofit organization is making a retail sale subject to tax under the retailing B&O tax classification on the funds received from governmental entities for habitat restoration projects. Similarly, the nonprofit organization is responsible for collecting retail sales tax from the state or local governmental entity for these amounts and remitting them to the Department.

There are no general retail sales tax, use tax, or B&O tax exemptions or deductions for nonprofit organizations engaging in these projects for a governmental entity. If retail sales tax is not paid to the nonprofit organization at the time of purchase as required by RCW 82.08.020, the organization remains liable for the tax until it is paid to the Department. RCW 82.08.050.

Taxability of Purchases Made by the Nonprofit

Purchases Not Subject to Retail Sales or Use Tax

Purchases of retail services by the nonprofit organization, including subcontractor services, to fulfill the contractual obligations of a habitat restoration project are purchases for resale (wholesale), if not consumed, and are not subject to retail sales or use tax. RCW 82.04.060.

Purchases of tangible personal property that will become part of the completed project are purchases for resale (wholesale) and not subject to retail sales or use tax. RCW 82.04.060.

The nonprofit organization must provide a valid reseller permit to the seller, service supplier, or subcontractor to document the wholesale nature of the purchases. See WAC 458-20-102.

Purchases Subject to Retail Sales or Use Tax

The nonprofit organization must pay retail sales or use tax on the purchase of tangible personal property that is consumed in performing construction. Examples of consumed materials include, but are not limited to:

- Rented or purchased equipment used to fulfill the habitat restoration project, such as construction or transportation vehicles, and tools;
- Temporary silt fencing used for erosion control;

- Fuels consumed by rented or purchased equipment; and
 - Computers or other office supplies used to track or complete the project.
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Application

This ETA is effective July 1, 2021. The Department will accept the prior reporting of a taxpayer if the taxpayer made a good faith effort to comply with the superseded Interim Statement Regarding Nonprofit Conservation Organizations Receiving Funds from Governmental Entities for Habitat Restoration Projects. The Department will not, however, issue refunds for taxes validly paid.

If you have questions regarding the taxability of preexisting contracts, request a [binding tax ruling](#) from the Department.

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