

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.

Taxability of Salmon Recovery Grants Received by Nonprofit Organizations

Purpose & Scope

This Excise Tax Advisory (ETA) addresses the business and occupation (B&O) and retail sales tax consequences for nonprofit organizations that receive salmon recovery grants as identified in [ESB 5220](#).

Note:

- This ETA does not address the tax treatment of habitat restoration grants that do not meet the eligibility requirements under [RCW 82.04.4339](#). See ETA 3XXX.2021 for additional information on the taxation of non-salmon habitat restoration activities.
- Salmon recovery grants 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 ruling](#).
- This ETA does not address grants that involve multiple projects. For these types of grants, please [request a binding ruling](#).

B&O and Retail Sales Tax

Business and Occupation Tax

Pursuant to RCW 82.04.4339¹, a qualifying nonprofit organization may take a deduction against its B&O tax in the amount of the salmon recovery grant received.

¹ Updated by Laws of 2021, ch. 143 ([ESB 5220](#)).

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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>.

Retail Sales Tax

The organization is exempt from collecting retail sales tax on the grant proceeds received for providing salmon recovery activities as identified in [ESB 5220](#).

The effective date of this provision is April 26, 2021.

**Qualifying Grants:
General
Requirements**

RCW 82.04.4339 defines a “salmon recovery grant” as financial assistance provided to primarily benefit the public as a whole by renewing, restoring, or protecting, by human intervention, salmon² ecosystems or salmon habitats in Washington state.

To qualify for the B&O tax deduction and retail sales tax exemption, the grant must meet all of the following requirements:

1. The grant is issued by a qualifying grantor;
2. The grant is issued to a qualifying grantee;
3. The primary purpose of the grant is to renew, restore, or protect salmon ecosystems or habitats in the state of Washington;
4. The grant activities are performed by human intervention; and
5. The grant primarily benefits the public as a whole.

The examples found in this guidance identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances. If you have a question as to whether your activities qualify, you may [request a binding ruling](#) from the Department.

**1. Qualifying
Grantors**

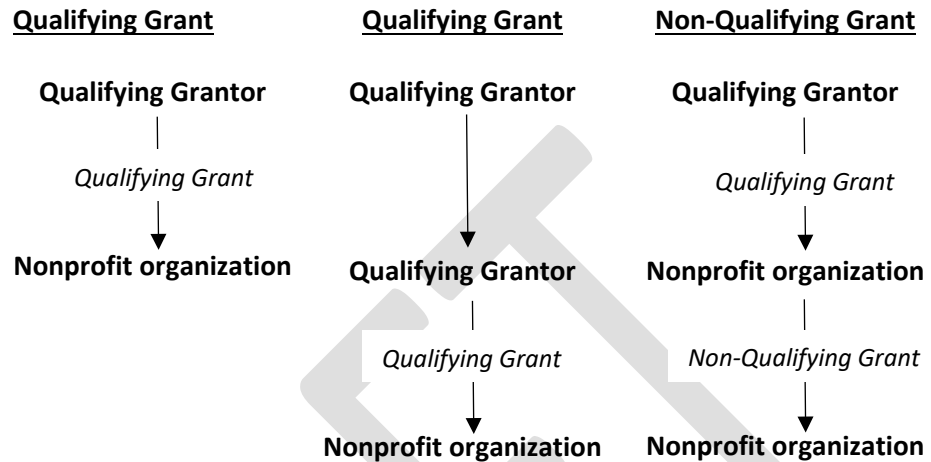
The following entities or persons are the only grantors qualified to provide eligible grants under this statute:

- The Federal Government or any federal agency;
- The State of Washington;
- Any State of Washington county, city, town, port district, water-sewer district, school district, metropolitan park district, or other municipal corporation or political subdivision of Washington; or
- Federally recognized Indian tribes in the State of Washington, as defined in [RCW 43.06.523](#), which includes their enterprises, subsidiaries, and constituent parts.

² The term “salmon” is defined under [RCW 77.85.010\(8\)](#) and includes all species of the family *Salmonidae* that are capable of self-sustaining, natural production.

Grants must originate directly from qualifying grantors to be eligible. Subsequent redistributions of the grant are ineligible for exemption.

Example 1:



2. Qualifying Grantees

Only nonprofit organizations, as defined in [RCW 82.04.3651](#), are eligible for the salmon recovery grant B&O tax deduction and retail sales tax exemption. That definition includes organizations exempt from federal tax under section 501(c)(3), (4), or (10) of the federal Internal Revenue Code. Other types of organizations may also meet the definition of nonprofit organization so long as the organizations fulfill the requirements listed under RCW 82.04.3651.

3A. Grants: Primary Purpose - Generally

To be eligible for the B&O tax deduction and retail sales tax exemption, the primary purpose of the issued grant must be to renew, restore, or protect salmon ecosystems or habitats in Washington. In general, if the intent of the grant activity is to provide a benefit to salmon ecosystems or habitats, and that benefit is demonstrable, then the Department will presume the grant has the primary purpose of renewing, restoring, or protecting salmon ecosystems or habitats. The Department may review the specific facts and circumstances of the grant to overcome this presumption as appropriate.

Example 2:

Facts:

- A grant is issued to a nonprofit organization to install a fish ladder to assist salmon in their migration around an existing dam in order to access an integral spawning habitat.

Results:

- The purpose of the grant is to restore salmon migration paths.

- Migration paths which provide access to rivers and streams are a crucial component of the salmon’s ecosystem as they are a key part of the salmon’s biological cycle.
- The intent of the grant activity is to provide a benefit to salmon habitats and ecosystems and that benefit is demonstrable.
- The primary purpose of the grant is to renew, restore, or protect salmon habitats or ecosystems and meets eligibility requirements, assuming all other statutory requirements are met.

Example 3:

Facts:

- A grant is issued to a nonprofit organization for the removal of derelict fishing nets in order to protect marine life generally. The area in which these nets are to be removed is an estuary, which is home to a large juvenile salmon population.

Result:

- The purpose of the grant is to remove derelict netting for the benefit of marine life and to protect salmon habitats.
- Derelict fishing nets are a hazard to salmon as the netting could entangle or trap salmon resulting in injury or death.
- Because the derelict fishing nets are being removed to protect salmon habitats, the intent of the grant activity is to provide a benefit to salmon habitats or ecosystems and that benefit is demonstrable.
- The primary purpose of the grant is to renew, restore, or protect salmon habitats or ecosystems and meets eligibility requirements, assuming all other statutory requirements are met.

Example 4:

Facts:

- A grant is issued to a nonprofit organization to support forage fish habitats in order to provide a food source to juvenile and adult salmon as they migrate to the ocean.

Result:

- The purpose of the grant is to renew salmon ecosystems by restoring the preferred food sources for juvenile and adult salmon.

- While the grant provides ancillary benefits to another non-salmon species, the intent of the grant activity is to restore essential aspects of the salmon’s ecosystem.
- The intent of the grant activity is to provide a benefit to salmon habitats or ecosystems and that benefit is demonstrable.
- The primary purpose of the grant is to renew, restore, or protect salmon habitats or ecosystems and meets eligibility requirements, assuming all other statutory requirements are met

Example 5:

Facts:

- A grant is issued to a nonprofit organization to restore a riparian salmon habitat and, as a result, will also decrease the risk of flooding to nearby fields.

Results:

- The purpose of the grant is to restore a specified salmon habitat.
- The decreased risk in flooding is a natural, ancillary consequence of restoring the riparian ecosystem and would not, in itself, invalidate the grant’s eligibility.
- Despite the ancillary benefits to the surrounding ecosystem, the intent of the grant activity is to renew and restore salmon habitats or ecosystems.
- The intent of the grant activity is to provide a benefit to salmon habitats or ecosystems and that benefit is demonstrable.
- The primary purpose of the grant is to renew, restore, or protect salmon habitats or ecosystems and meets eligibility requirements, assuming all other statutory requirements are met.

Example 6:

Facts:

- A grant is issued to a nonprofit organization to restore estuary environments that were historically salmon habitats, although salmon are not currently found in these areas.

Results:

- The purpose of the grant is to restore a specified salmon habitat.

- The fact that the salmon do not currently physically reside in the area being restored would not be dispositive of the grant’s eligibility as this is the purpose of the restoration project.
- The intent of the grant activity is to provide a benefit to salmon habitats or ecosystems and that benefit is demonstrable.
- The primary purpose of the grant is to renew, restore, or protect salmon habitats or ecosystems and meets eligibility requirements, assuming all other statutory requirements are met.

3B. Primary Purpose – Chapter 77.85 RCW

The Department generally considers salmon recovery grants issued under [Chapter 77.85 RCW](#) to be primarily for the renewal, restoration, or protection of salmon habitats and ecosystems. Recipients of such grants may qualify for the B&O tax deduction and retail sales tax exemption for salmon recovery grants if the other eligibility requirements under [RCW 82.04.4339](#) are met. Grant eligibility, however, is not limited to grants issued under Chapter 77.85 RCW.

4. Qualifying Grants: Human Intervention Requirement

To be eligible for the B&O tax deduction and retail sales tax exemption, any renewal, restoration, or protection activities must be done by human intervention. In most instances these grant activities to renew, restore, or protect salmon habitats or ecosystems will be accomplished by some degree of human intervention and, as a result, the Department will generally presume this element has been satisfied.

5. Qualifying Grants: Benefit to the Public as a Whole

To be eligible for the B&O tax deduction and retail sales tax exemption, the grant must also be used to primarily benefit the public as a whole through the renewal, restoration, or protection of salmon habitats or ecosystems.

If the grant furthers the regulatory activities of the grantor or requires performance pursuant to a regulatory mandate, this will not disqualify eligibility for the B&O tax deduction and retail sales tax exemption.

Retail Purchases Subject to Sales or Use Tax

Qualifying nonprofit organizations must pay sales or use tax on all retail **purchases** of tangible personal property or services, including those that are made by the nonprofit organization in the performance of the grant. RCW 82.08.050 and 82.08.020.

Taxable purchases of tangible personal property

Common examples of taxable purchases of tangible personal property by a nonprofit organization as part of a salmon recovery project may include, but are not limited to, purchases of:

- Office equipment and supplies.
- Building materials such as lumber, stone, or gravel.
- Planting or landscaping materials such as mulch, dirt, or sand.
- Shovels, rakes, and other tools provided for use to members of the organization or volunteers.
- Seedlings, shrubs, and grasses to be planted by members of the organization or volunteers, unless specifically exempt.

Taxable purchases of retail services

Common examples of taxable purchases of retail services by a nonprofit organization as part of a salmon recovery project may include, but are not limited to, purchasing the following services:

- Removal of septic tanks, oil tanks, or storage tanks.
 - Cleaning, repairing, or improving existing structures.
 - Demolishing or moving existing buildings, dams, bulkheads, levees, tide gates, hard shoreline armoring, railway trestles, or other structures.
 - Clearing land such as removing logjams and tidal flow blockages, grading land in preparation of revegetation or renewing natural shorelines.
 - Moving or removing earth such as bulldozing to create or groom a shoreline, or trenching to restore or enhance waterways or water channels.
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