



State of Washington  
Department of Revenue

# Excise Tax Advisory

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 They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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CONVERSION DATE: July 1, 1998

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**This ETA is cancelled effective January 29, 2009. This document does not provide any needed guidance. Other documents issued by the Department (e.g., Det. 05-0104, 26 WTD 001, and Det. 99-176, 19 WTD 456) provide more complete guidance on this subject, including recognition of the "common law" principles expressed by Washington's courts.**

## SPECULATIVE BUILDERS IN JOINT VENTURES

Issued June 12, 1970

Can a speculative builder claim exemption from the retail sales tax or use tax on construction payments made to contract vendors under a claimed joint venture where the agreement does not vest any ownership in real property in any of the contractors?

The taxpayer alleged that a joint venture existed between himself (a land developer), a speculative builder, and three contract vendors. It was contended that these vendors did not make retail sales to the taxpayer because of the joint venture relationship.

The department ruled that the claimed joint venture was not factually established. No joint venture informational return was filed for federal income tax purposes, neither was a joint venture registration secured with this department, nor was any other public or private agency notified. While the taxpayer may have paid these three employees directly, exercised a degree of control over them, and while the relationship may have been informal, these facts do not establish a joint venture between the parties.

The department adds that even if it could recognize a joint venture claim, the written agreements, which were dated after the audit, contain a clause that the ownership of all the parties is an interest in personalty and not in realty. Under Rule 170, to be considered a joint venture "speculative builder," one must construct buildings for sale or rental upon real estate owned by him. In the present case, since the three vendors did not participate in the ownership of real estate, they did not receive income from the sale of their own improved real estate, but rather from construction, labor, and services rendered in connection with the erection of structures upon real estate owned by the taxpayer. These facts fit the retail sale definition of RCW 82.04.050 as the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or

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*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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existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation.