

Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

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Storing, Inspecting, Testing, and Labeling of Canned Salmon

The purpose of this excise tax advisory is to clarify the tax reporting responsibilities of persons in Washington who store, inspect, test, and label canned salmon that was canned outside of Washington.

The activities of salmon packers (packers), canned salmon labelers (labelers) can generally be described as follows. The packers catch (or buy), clean, and can the salmon in Alaska. The canned salmon is marked with codes that identify the species of salmon, the date the salmon was canned, and where the salmon was canned. These cans are inspected in Alaska and the contents of faulty cans are either destroyed or reprocessed. The canned salmon is then shipped to labelers in Washington.

The labelers store the unlabelled cans in warehouses located in Washington. The canned salmon is at all times the property of the packer. Upon order from the packer, the labeler (1) selects particular batches of canned salmon, (2) inspects those cans for dents and other defects, (3) weighs the cans to determine if there has been any leakage, (4) vacuum tests the cans to determine integrity of the product, and (5) places labels (supplied by the packers) on the cans that pass inspection and testing. The labeler packages the canned salmon for shipment to the packers' customers or another warehouse by placing the labeled cans in boxes, sealing the boxes, and shrink wrapping the boxes. The labeler then loads the canned salmon on the carrier (selected by the packer) with the appropriate dunnage.

Labelers separately charge packers for: storage of the product; the inspection, testing, and labeling services; and the dunnage used when loading the canned salmon on the carrier.

Taxability of income received by labelers:

Chapter 354, Laws of 2006 (EHB 3159 as signed by the Governor), establishes a specific business and occupation (B&O) tax rate for canned salmon labelers. The canned salmon labelers B&O tax rate is effective July 1, 2006 and applies to all income from inspecting, testing, labeling, and storing salmon owned by another person.

Prior to July 1, 2006, the charges for storage of the canned salmon and for the use of dunnage are subject to the B&O tax at the warehousing rate. *See* WAC 458-20-117 and 458-20-182(3). The inspecting, testing, and labeling of the canned salmon was not a specified defined activity for B&O tax purposes and therefore the income was subject to the B&O at the service and other activities rate.

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Eligibility for M&E exemption:

Persons who engage in testing for manufacturers or processors for hire are eligible for the exemption from retail sales and use taxes under RCW 82.08.02565 and 82.12.02565, respectively, for machinery and equipment used directly in the testing operation. The packers engage in manufacturing activities in Alaska. Testing is defined as "activities performed to establish or determine the properties, qualities, and limitations of tangible personal property." RCW 82.08.02565(2)(g). When the labelers inspect, weigh, and vacuum test the canned salmon, they determine the properties, qualities, and limitations of the canned salmon. Specifically, weighing determines consistency with the labels to be applied. If the weight is under, then consumer protection claims may be filed against the packers. Further, weighing, inspecting, and vacuum testing assist in determining if there is a leak in the can. These tests are necessary to products integrity and the health of consumers.

A testing operation begins at the point where the tangible personal property being tested enters the testing site and ends when that tangible personal property leaves the testing site. As such, the machinery and equipment used directly by the labelers to inspect and test to determine the properties, qualities, and limitations of the canned salmon is exempt from retail sales and use taxes under RCW 82.08.02565 and 82.12.02565 (generally referred to as the M&E exemption).

Machinery and equipment is used directly in a testing operation when it: conveys, transports, handles, or temporarily stores items of tangible personal property; provides physical support for or access to tangible personal property; and places tangible personal property in the container, package or wrapping in which the tangible personal property is normally sold or transported. (See RCW 82.08.02565(2)(c) along with other definitions of directly used.) The labelers use equipment to convey, handle, provide access to, and wrap labels on canned salmon. These activities occur during the testing operation, therefore the machinery and equipment will qualify for the M&E exemption from retail sales or use tax provided the other requirements of RCW 82.08.02565 have been satisfied. See WAC 458-20-13601.

Retail sales or use tax on materials:

Labelers use dunnage in their warehousing activities of loading and unloading tangible personal property. As such purchases of dunnage are subject to retail sales tax. Likewise, retail sales tax applies to purchases by labelers of other packaging materials such as clear wrap, boxes, tape, and box labels. If retail sales tax was not paid, then the labeler must pay the retail sales (commonly referred to as "deferred sales tax") or use tax directly to the Department. Chapter 354, Laws of 2006 (EHB 3159 as signed by the Governor), did not change the retail sales and use tax responsibilities of salmon labelers.

The use of the labels by the labelers is exempt of use tax under the provisions of RCW 82.12.0265.
