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ETA 3193.2014

Issue Date: November 4, 2014

Sourcing Dark Fiber Sales

Purpose & scope

The purpose of this ETA is to provide business and occupation (B&O) tax and retail sales and use tax guidance for the sourcing and apportionment of receipts from the sale of “dark fiber” used in telecommunications services

What is dark fiber?

Dark fiber is installed fiber optic cabling that has *not* been lit with a laser and associated equipment and therefore does not qualify as a “telecommunications service” as defined in RCW 82.04.065(27). See ETA 3171. In addition to providing access to an unlit fiber optic cable, dark fiber includes related services such as repair, installation, and maintenance.

Tax treatment of dark fiber

The provision of dark fiber falls within the definition of “competitive telephone service” (“CTS”) and is therefore subject to retail sales tax. The definition of CTS includes “... providing by any person of telecommunications equipment or apparatus, or services related to the equipment or apparatus...” RCW 82.04.065(5); 82.04.050(5); see also ETA 3171. The sale of dark fiber is subject to retail sales tax and retailing B&O taxes if sourced to Washington.

Dark fiber is a service for sales tax sourcing purposes

Dark fiber has attributes of both “equipment or apparatus” and “services related to equipment or apparatus” as described in the definition of CTS. For example, a sale of dark fiber may include the provision of a fiber cable and other related equipment as well as services such as repair, installation, or maintenance. For the purposes of sourcing sales of dark fiber, dark fiber is treated as “services related to equipment or apparatus” as described in the definition of CTS.

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Applicable sourcing statute The retail sale of tangible personal property and certain services, including CTS, is sourced pursuant to RCW 82.32.730. Under RCW 82.32.730 services are sourced to the place of receipt, which means the place of first use. In this case of dark fiber, the seller is generally providing services that are concurrently available to the purchaser for first use at multiple locations. Under such conditions, the seller has the option of sourcing the services to one location of first use or may allocate each sale to the appropriate location of first use as described below.

Sourcing sales of dark fiber services *Sourcing and services with multiple locations of concurrent use*
Sellers may allocate sales of dark fiber if the sales are received in multiple locations.
RCW 82.32.730

To apply this sourcing methodology to sales of dark fiber the following is required:

- Receipt of the dark fiber service must occur at multiple locations.
- Agreement by the purchaser and seller to allocate the dark fiber sale to multiple locations based on a reasonable and consistent method.
- Provision by the purchaser of the locations and allocation by the time of the invoice.

Sourcing to a single location

Alternatively, the seller may source the sale to a single known access point/location under RCW 82.32.730.

Example Dark Horse, Inc. sells dark fiber to BranFiber.com for \$100.00. The 10 miles of dark fiber runs through counties A, B, and C (all in Washington). BranFiber.com has offices that may access and use the fiber in the following locations:

- County A has 2 offices
- County B has 1 office
- County C has 3 offices

County retail sales tax rates are as follow:

- County A = 2%
- County B = 1%
- County C = 1.5%

State retail sales tax rate is as follows: 6.5%

The locations where the purchaser can potentially make first use of the results of the service are at the points of “access” to dark fiber. First use of the dark fiber can occur concurrently at multiple points of access along the fiber path. In this example, there are a total of 6 potential points of access or “first use.” Assuming the purchaser and seller agree to allocate to multiple locations based on the reasonable and consistent method below at the time of the invoice, the retail sales tax could therefore be

allocated as follows:

- County A tax = 2 (offices)/6 total = 33.3% x \$100 = \$33.30 x 2% = \$0.67
- County B tax = 1(office)/6 total = 16.6% x \$100 = \$16.60 x 1% = \$0.17
- County C tax = 3 (offices)/6 total = 50% x \$100 = \$50 x 1.5% = \$0.75
- State retail sales tax 6.5% x \$100 = \$6.50

Total retail sale tax = \$8.07

Retailing B&O tax is also allocated to the same locations and in the same proportions as the sales tax as described above. In the example above, all gross income would be taxable in Washington. Alternatively, the seller may source the sale to a single known access point/location. Retailing B&O tax would also be allocated to the single known access point/location.
