Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

ETA 3200.2017 Issue Date: April 19, 2017

Use Tax on Tangible Personal Property Temporarily Used in Washington for Business Purposes

Purpose

This Excise Tax Advisory (ETA) addresses how to determine liability for use tax on tangible personal property temporarily brought into Washington for business purposes on multiple occasions. This ETA does not address the use tax exemption available to nonresidents under RCW 82.12.0251(1).

Use tax overview

A consumer owes use tax on the use of tangible personal property (TPP) within Washington, unless a specific exemption applies, or the consumer previously paid Washington retail sales tax at the time of purchase.

Use tax is generally due on the full value (e.g., the purchase price or retail selling price of a comparable product) of the TPP at the time the TPP is used in Washington. However, as explained in this ETA, in some circumstances the use tax is computed on the rental value of TPP that is temporarily used in Washington.

Temporary use for business purposes

RCW 82.12.010(7)(c) provides an exception to the general use tax provisions. It states that if:

- a person is engaged in business outside the state, and
- brings TPP into Washington for 180 days or less (in a consecutive 365-day, rolling period), and
- temporarily uses the TPP for business purposes in the state,

then the value of the TPP for use tax purposes is an amount representing the reasonable rental value of the TPP. Per WAC 458-20-178(4)(i)(ii), reasonable rental value is normally determined by the rental price or the fair market rental value of similar products of like quality and character of the TPP, which is often calculated on a monthly basis.

Use tax applies to each incident of use

Per RCW 82.12.010(7)(c), there is a separate taxable event each time TPP from outside the state is temporarily used in Washington (180 days or less) for business purposes. Persons may use TPP in Washington on a temporary basis on multiple occasions. Each occasion represents an incident of use and the person will incur use tax on the rental value of each temporary use until:

(1) the TPP is used more than 180 days in a 365-day consecutive period, at which time use tax, measured on the full value of the TPP as of the date the use exceeds 180 days, will be due; or
(2) the person has paid a total amount of use tax equal to the amount that would have otherwise been due on the full value of the TPP.

Examples

The following examples identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

Unless otherwise stated, presume these facts for each of the following examples:

- The contractor performs construction projects in both Washington and Oregon, with business locations in both states.
- All equipment is based at the contractor's business location in Oregon, and temporarily brought into Washington.
- The only Washington use of the equipment by the contractor is as described in the examples.
- The contractor has not previously paid any retail sales or use tax relative to its purchase or use of the equipment described in the examples.

Example 1

XYZ Contracting (XYZ) performs two construction projects in Washington. For the first project, XYZ uses a backhoe for 15 days in the second half of May, after which the backhoe is stored in Washington for the month of June. In the second project it uses the same backhoe for the months of July and August. Because XYZ used the backhoe for 107 days in Washington (less than 180 days in a 365-day period), it is responsible for paying use tax on the 15-day rental value of the backhoe on its May return, and the monthly rental value of the backhoe on each of its June, July and August tax returns.

Example 2

On March 1, ABC Construction (ABC) brings a cement mixer into Washington for use on a Washington construction project. ABC intends to use the mixer in Washington for a period less than 180 days. ABC reports its use tax liability on a monthly basis, based on a fair rental value of the mixer, beginning with its March return. In August, ABC determines that it will continue to use the cement mixer in Washington in excess of the 180 days as originally planned. On its August return, ABC computes and pays use tax on the full value of the cement mixer as of the date the use exceeds 180 days, claiming a credit for the use tax it had previously paid on its March through July returns

Example 3 AZT Builders (AZT) filed and correctly paid use tax on the reasonable rental value of its grader used in Washington for projects in 365 consecutive day periods in 2010-2011, 2012-2013, and 2016. AZT did not use the grader in Washington during any of the consecutive 365-day periods for more than 180 days. The Department audits AZT in 2017. During the audit, the Department determines that AZT inadvertently failed to report use tax on the grader when used for 75 days on a construction project in Washington in 2015. The Department will assess use tax, with interest and any applicable penalties, on the rental value of the grader for AZT's 75-day use in 2015.

Example 4 Acme Construction (Acme) used the same bulldozer in Washington for 19 days during 2012-2013 and for 112 days during 2015 (each period representing a consecutive 365-day period). Neither use exceeded 180 days. Acme brings the bulldozer back into Washington for use on a new construction project beginning September 1, 2016 and ending March 21, 2017, or a total of 201 days. Because Acme used the bulldozer for more than 180 days in a 365-day period (September 1, 2016 to August 31, 2017), use tax is due on the full value of the bulldozer as of Febraury 28, 2017, the date the use first exceeds 180 days. Acme may take a credit against this liability for any use tax it previously paid on the rental value of the bulldozer for the prior periods.

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