

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

ETA 3024.2013

Issue Date: September 26, 2013

Public Works Contracts

Background

RCW 60.28.011(1)(a) provides that a percentage not to exceed five percent (5%) of a public improvement contract price must be withheld and placed in trust by the public body. Any subcontractor, supplier, or government agency owed money from the project may file a Notice of Lien against the contract retainage. Upon completion of the contract and receipt of a certificate from the Department certifying that no taxes or penalties are due, the disbursing officer will release and pay in full the amounts retained during the performance of the contract.

Scope of ETA

This excise tax advisory (ETA) explains retainage, when retail sales tax is due on the amount retained, whether sales tax is subject to the retainage requirements, and an exclusion from contract retainage.

When is tax due on the retainage?

When a contractor has performed the services necessary to entitle the contractor to a progress payment, the contractor has earned that progress payment. The retainage withheld by the public body is the property of the contractor and is held in trust to ensure payment of the contractor's obligations. The business and occupation and retail sales taxes are due at the time the contractor receives the progress payment including any amount retained by the public body.

Should retail sales tax be included in retainage?

No. As stated above, the contractor must report the retail sale of its services when it performs those services. The retainage applies only to the amounts that are due to the contractor. The retail sales tax paid on the contract is not the property of the contractor; rather, it is collected by the contractor and held in trust until paid to the Department. RCW 82.08.050. Retail sales tax is not subject to retainage and the public body must pay the full amount of retail sales tax to the contractor.

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General tax information is available on our website at dor.wa.gov.

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**Retainage
exclusion**

For public improvement contracts, the public body must withhold a percentage of the contract price and place it in trust. However, public improvement contracts funded in whole or in part by federal transportation funds are excluded from this requirement. Substitute House Bill 1420, chapter 113, Laws of 2013. RCW 60.28.011(1)(b) provides for these improvement contracts to rely on the contract bond as referred to in chapter 39.08 RCW for the protection and payment of:

- The claims of any person or persons arising under the contract to the extent such claims are provided for in RCW 39.08.010; and
- The state with respect to taxes, increases, and penalties imposed pursuant to Titles 50, 51, and 82 RCW arising under the contract.

Whether subject to retainage or a contract bond, all public works contractors must report and pay taxes based on each progress payment (including any amounts retained by the public body).
