

Excise Tax Advisory

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ETA 3032.2021

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Taxability of Auction Sales of Abandoned Motor Vehicles by a Registered Tow Truck Operator

Purpose

This Excise Tax Advisory (ETA) addresses the taxability of abandoned motor vehicles sold at public auction by a Registered Tow Truck Operator (RTTO).

This ETA does not address scenarios where an RTTO applies for title to an abandoned vehicle, as permitted under Chapter 46.55 RCW, in circumstances where no bids are received or the RTTO is the successful bidder at auction.

Overview of RTTO services

Chapter 46.55 RCW provides the authority for how an RTTO shall tow, store, and sell an abandoned motor vehicle at auction. RCW 46.55.010(7) defines an RTTO as a person who impounds, transports, or stores unauthorized vehicles, or disposes of abandoned vehicles.

When an RTTO performs a public or private impound of a vehicle that results in no payment and the vehicle being abandoned, a lien is placed on the vehicle that represents the RTTO's unpaid towing and storage charges. At the time of the impoundment, the RTTO requests the name of the vehicle's registered owner from the Department of Licensing (DOL). The RTTO mails notice to the last known address of the vehicle's registered owner and legal owner, when applicable. This notice states the date, time, and location of impoundment and the amount due to the RTTO for towing and storage services. The notice is followed by a second notice, sent with certification of mailing, after 120 hours of impoundment. This second notice states the date, time, and place of the public sale at auction and the current amount due.

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If the registered owner does not claim the vehicle within 15 days and pay the outstanding towing and storage charges, the law requires the RTTO to sell the vehicle at a public auction, conducted by the RTTO. The proceeds from the sale of the vehicle are used to compensate the RTTO for unpaid towing and storage charges associated with the vehicle.

In cases where the proceeds from the abandoned vehicle auction are less than the lien for unpaid towing and storage charges, the unpaid portion of the lien remains subject to further collection as debts of the registered owner of the vehicle at the time of its abandonment.

In cases where the proceeds from the abandoned vehicle auction exceed the lien value plus the associated retail sales tax, the RTTO must send the surplus funds to the DOL within 30 days of the vehicle sale. The RTTO documents each auction sale and calculates the surplus funds, if applicable, by completing the DOL's required form, [Abandoned Vehicle Affidavit of Sale](#), which must accompany the surplus funds sent to the DOL.

The activities performed by an RTTO as described above consist of two separate transactions, each with its own separate tax implications:

1. Towing and storage of the abandoned motor vehicle.
2. Abandoned vehicle sale at auction.

**Transaction 1:
Taxability of towing
and storage of the
abandoned motor
vehicle**

Income received for automobile towing and storage services is subject to retailing business and occupation (B&O) tax under RCW 82.04.250 and retail sales tax under RCW 82.08.020.

If the RTTO does not receive payment for the impoundment (i.e., towing and storage) services provided, Chapter 46.55 RCW requires the RTTO to sell the vehicle at public auction. Proceeds from the auction sale are applied first to the balance owed to the RTTO for its towing and storage services. This amount is subject to both retailing B&O and retail sales tax.

When the auction proceeds are less than the towing and storage lien, the RTTO may back out retail sales tax from the vehicle sale proceeds to arrive at the taxable measure of the towing and storage services subject to the retailing B&O and retail sales tax.

**Transaction 2:
Taxability of vehicle
sale at auction**

Effective July 28, 2019¹, an abandoned vehicle sold by an RTTO at public auction is excluded from the definition of a "sale" under RCW 82.04.040. As a result, an RTTO is not required to collect the retail sales tax from a successful bidder at public

¹ Substitute Senate Bill 5668 (Chapter 357, Laws of 2019), codified at RCW 82.04.040(1)(b).

auction or, if there is no successful bidder, from a licensed vehicle wrecker, hulk hauler, or scrap provider as provided in RCW 46.55.130.

However, if the buyer is a consumer, the buyer is still subject to the use tax on the use of an abandoned vehicle as required under chapter 82.12 RCW. The tax is collected by the DOL at the time of the vehicle's transfer of ownership.

In addition, when conducting an auction sale pursuant to Chapter 46.55 RCW, the RTTO does not owe B&O tax on the gross proceeds from the vehicle sold at auction (other than the retailing B&O tax paid on the portion of the proceeds applied to the towing and service charges as described in the "Transaction 1" discussion above).

Surplus auction proceeds

When the proceeds of the auction sale exceed the amount necessary to satisfy the towing and storage lien (and the applicable retail sales tax), this results in surplus funds.

The surplus funds, if any, must be remitted to the DOL within 30 days of the sale of the vehicle. The funds must be accompanied by a completed [Registered Tow Truck Operator Surplus Funds Report](#). Surplus funds sent to the DOL are not subject to B&O tax.

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. The examples assume a 10% retail sales tax rate.

Example A (*auction proceeds less than towing and storage lien*):

Bob's Towing is an RTTO that filed a \$660 lien on an abandoned vehicle for unpaid charges for towing and storage services rendered. The \$660 lien consists of the \$600 gross towing and storage charge and the \$60 of retail sales tax on that charge. Bob's Towing sells the abandoned vehicle to a consumer at auction for \$500. Bob's Towing's reporting obligations are as follows:

- **Transaction 1:** Sale of towing and storage services:
 - The auction proceeds are less than the towing and storage lien. As a result, Bob's Towing may back out retail sales tax from the vehicle sale proceeds to arrive at the taxable measure of the towing and storage services subject to retailing B&O and retail sales tax.
 - Taxable measure: $\$500 / 1.10 = \454.55 .
 - Retail sales tax due: $\$454.55 \times 0.1 = \45.45 .
 - Retailing B&O tax due: $\$454.55 \times 0.00471 = \2.14 .

- Remaining unpaid lien after vehicle auction sale: \$160 (\$145.45 in vehicle towing and storage charges and \$14.55 in retail sales tax).
- **Transaction 2:** Vehicle sale at auction:
 - No retail sales tax or B&O tax is due on the transaction.
 - However, for reporting purposes, the gross proceeds from the auction sale of \$500 should be reported under the Service and Other Activities B&O tax classification with an Other (“99”) deduction taken for the full \$500, resulting in zero B&O tax due.

Example B (auction proceeds exceed towing and storage lien):

Same facts as above, but instead, Bob’s Towing sells the abandoned vehicle to a consumer at auction for \$900, resulting in \$300 in surplus auction proceeds. Bob’s Towing remits the surplus \$300 to the DOL. Bob’s Towing’s reporting obligations are as follows:

- **Transaction 1:** Sale of towing and storage services:
 - The auction proceeds exceed the towing and storage lien. As a result, Bob’s Towing may not back out retail sales tax from the vehicle sale proceeds in determining the taxable measure of the towing and storage services subject to retailing B&O and retail sales tax.
 - Taxable measure: \$600.
 - Retail sales tax due: $\$600 \times 0.10 = \60 .
 - Retailing B&O tax due: $\$600 \times 0.00471 = \2.83 .
- **Transaction 2:** Vehicle sale at auction:
 - No retail sales tax due on the transaction.
 - The gross proceeds from the auction sale of \$900 should be reported under the Service and Other Activities B&O tax classification with an Other (“99”) deduction taken for \$900, resulting in zero B&O tax due.
