

Excise Tax Advisory

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Dump Truck Operators

Purpose

This Excise Tax Advisory (ETA) explains the public utility tax (PUT), business and occupation (B&O) tax, and retail sales tax reporting responsibilities for various services commonly provided by dump truck operators.

Background/Scope

Dump truck operators perform a variety of activities that may be subject to several different Washington taxes. This ETA clarifies proper tax collection and reporting in a variety of situations. Specifically, it addresses the taxation of the following activities commonly engaged in by dump truck operators:

- Sales of materials, such as fill dirt, top soil, rock, or sand, delivered using a dump truck;
- Earth moving also referred to as earthwork services, which include trenching, excavating, back filling, dumping earth, onsite improvement of earth according to agreement requirements, and other related activities;
- Motor transportation services (hauling others' property for hire);
- Collecting and disposing of "construction, demolition, and land clearing debris" (CDL); and
- Bare rentals and rentals of equipment with an operator.

This ETA contains examples that identify a number of facts and then state a conclusion. The examples should only be used as a general guide. The tax results of other situations must be determined after a review of all relevant facts and circumstances in each case.

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Sales of Materials

Sales of tangible personal property, including construction and landscaping materials (top-soil, fill dirt, sand, rock, etc.) to a consumer are subject to B&O tax under the retailing classification and retail sales tax, including any charges for delivery. See RCW 82.04.050, 82.04.250, 82.08.020, and 82.08.145. Also see Washington Administrative Code (WAC) 458-20-110 for more information on the taxability of delivery charges.

The retail sales tax rate is determined according to the location where materials are received by the customer. RCW 82.32.730.

Sales to general contractors and other resellers, are subject to B&O tax under the wholesaling classification in cases where the buyer presents a reseller permit at the time of purchase. See RCW 82.04.060 and 82.04.270. For more information on reseller permits see WAC 458-20-102.

Example 1: Sale of materials to a consumer

Facts:

- ABC Materials, Inc. (ABC) sells 10 yards of top-soil (\$20 per yard) and delivers it to Sam Smith, a consumer purchasing for personal use, in Olympia, WA.
- The total sale charge is \$250; \$200 for the top-soil and \$50 for delivery.

Result:

- The \$250 sale, including delivery charges, is subject to the retailing B&O and retail sales taxes.
- ABC must collect retail sales tax using the tax rate for Olympia, WA.

Example 2: Sale of materials - two separate sales

Facts:

- ABC sells 5 yards of crushed rock, at \$25 per yard, to Sally Jones (Sale 1). Sally, a general landscaping contractor, will resell the crushed rock to her customer. Sally presents ABC with a reseller permit for the 5 yards of crushed rock.
- Sally also purchases 5 yards of crushed rock for personal use at her residence (Sale 2).
- Sally requests that ABC deliver all of the crushed rock to a location in Yelm, WA.
- ABC charges Sally \$125 for the crushed rock purchased for resale and \$125 for the purchase of crushed rock for personal use.
- ABC charges \$50 for the delivery of all of the crushed rock.

Result:

- Sale 1 is subject to wholesaling B&O tax. The measure of the wholesaling B&O tax is the \$150 gross proceeds of sale (\$125 sales price plus \$25 delivery charge).*

- Sale 2 is subject to retailing B&O tax and retail sales tax. The measure of the retailing B&O tax and retail sales tax is the \$150 gross proceeds of sale (\$125 sales price plus \$25 delivery charge).* ABC must collect retail sales tax according to the rate for Yelm, WA .

*If a retail sale consists of both taxable and nontaxable tangible personal property, and delivery charges are a component of the selling price, retail sales tax applies to the percentage of delivery charges allocated to the taxable tangible personal property. Retail sales tax is not due on delivery charges allocated to exempt tangible personal property.

Earth Moving and Earthwork Services

Dump truck operators are commonly hired to provide services related to the preparation of a construction site referred to here as earth moving and earthwork services. Such services may include trenching, excavating, back filling, dumping earth, and moving on-site earth material.

Generally, a dump truck operator is providing an earth moving or earthwork service only if: (1) the operator is responsible for the performance of the work; (2) the contract's purpose is the removal or placement of earth; and (3) the operator is liable for meeting contract specifications. An operator is not providing an earthmoving or earthwork service if it operates equipment under the control of another party when performing the work.

Dump truck operators who engage in earth moving or earthwork services are subject to the B&O tax classification that corresponds to the nature of the construction project and the type of customer. For example,

- *General Construction Projects:* Earth moving or earthwork services provided to private parties or the State are subject to:
 - B&O tax under the Retailing classification and retail sales tax when performed as prime contractor (RCW 82.050, 82.04.250, and 82.08.020), and;
 - B&O tax under the Wholesaling classification when performed as a sub-contractor and where a reseller permit is received from the service provider's customer (RCW 82.04.060 and 82.04.270).
- *Public Road Construction Projects:* Earth moving or earthwork services provided for public road construction projects (other than state-owned roads) are subject to B&O tax under the Public Road Construction classification. RCW 82.04.280 and 82.04.050(10).
- *Logging Road Construction Projects:* Earth moving or earthwork services provided for logging road construction projects are subject to B&O tax under the Extracting for Hire classification. RCW 82.04.280(1)(c).

Dump truck operators who engage in the business activities discussed in this section should also refer to the following:

- **WAC 458-20-13501** Timber harvest operations.
- **WAC 458-20-170** Constructing and repairing of new or existing buildings or other structures upon real property.
- **WAC 458-20-171** Building, repairing or improving streets, roads, etc. ...
- **WAC 458-20-172** Clearing land, moving earth, cleaning, fumigating, razing or moving existing buildings, and janitorial services.

Example 3: General construction project

Facts:

- XYZ Earthworks, Inc. (XYZ) is hired by DEF General Contractors, Inc. (DEF) to excavate, load, haul, and dispose of dirt and other earth materials from a construction site.
- DEF does not control the performance of XYZ's excavation services, and XYZ is responsible for ensuring its work meets industry construction standards.
- At the time of purchase, DEF presents XYZ with a copy of its reseller permit.

Result:

- XYZ is performing earth moving and earthwork services because XYZ is responsible for the excavation and related activities of loading, hauling, and disposal of dirt and other earth materials for a general construction project. The services go beyond just operating equipment, collection and disposal, or motor transportation.
- The sale is a wholesale sale because XYZ is providing the services as a subcontractor and obtains a reseller permit from their customer.
- XYZ's \$10,000 charge is subject to wholesaling B&O tax.

Example 4: Public road construction project

Facts:

- XYZ is hired by the City of Vancouver, Washington, to excavate, load, haul, and dispose of dirt and other earth materials from the site of a public road construction project.
- XYZ is responsible for the performance of its services to contract specification and industry road construction standards.
- XYZ charges the City of Vancouver \$10,000.

Result:

- XYZ is performing earth moving and earthwork services because it is responsible for the excavation and related activities of loading, hauling, and disposal of dirt and other earth material. The services go beyond operating equipment, collection and disposal, or motor transportation services.
- XYZ is providing the construction services for a public road construction project, therefore, the \$10,000 charge is subject to public road construction B&O tax.
- Additionally, XYZ is considered a consumer of any of the goods or services used in the provision of its services for purposes of the retail sales tax. See WAC 458-20-171, sections titled **Retail Sales Tax** and **Use Tax**.

Example 5: Logging road construction project

Facts:

- XYZ is hired by GHI Logging Company (GHI), to excavate, load, haul, and dispose of dirt and earth materials extracted from the site of a logging road construction project.
- XYZ is responsible for the performance of its services to contract specification.
- XYZ charges GHI \$10,000.
- GHI will use the logging roads to extract timber from the surrounding real property.

Result:

- XYZ is performing a construction service because it is responsible for the excavation and related activities of loading, hauling, and disposal of dirt and other earth materials. The services go beyond those which are necessary to operate the equipment, collection and disposal, or motor transportation services.
- XYZ is providing the construction services for a logging road construction project and therefore, the \$10,000 charge is subject to B&O tax under the Extracting for Hire classification.
- Additionally, XYZ is considered a consumer of any equipment, supplies, and other goods used in the provision of its services for purposes of the retail sales tax. See WAC 458-20-135(6).

**Motor
Transportation
Services**

Dump truck operators commonly transport property for hire, including loading and unloading activities. Dump trucks are motor vehicles. RCW 46.04.320. An operator engaged solely in a transportation activity, including any operations incidental thereto, is subject to PUT on charges for those activities. Operators performing activities beyond solely transporting may be subject to B&O tax and retail sales tax.

Any of the following factors indicate an operator is providing a service beyond solely transporting goods and materials:

1. The dump truck operator provides services other than loading, transporting, and unloading materials (for example, collecting and recycling/processing CDL is not solely a transportation activity);
2. The property is not transported on public roads; or
3. The property transported is owned by the dump truck operator.

Dump truck operators who engage in transporting property for hire over public roads should also refer to:

- **WAC 458-20-180** Motor carriers.

Example 6: Transporting earth materials

Facts:

- UVW Transport, Inc. (UVW) is in the business of transporting earth materials (dirt, rock, sand, etc.) for hire.
- UVW owns and operates the dump trucks, backhoes, and loaders used in providing its transportation services.
- UVW is hired by DEF General Contractors, Inc. (DEF) to load, transport, and unload large rocks owned by DEF from a rock quarry in Shelton, WA, to a construction site in Montesano, Washington.
- UVW charges DEF \$2,000.

Result:

- The sale is properly classified as a motor transportation service because UVW is solely transporting materials.
- The \$2,000 charged by UVW is subject to PUT under the tax rate applicable to motor transportation businesses.

Disposal & Recycling Services

Dump truck operators may engage in recycling or disposal activities. Charges for collecting and disposing construction, demolition, and land-clearing debris (CDL), which might include concrete, wood, fixtures, roofing, other building materials, dirt, sand, rock, and vegetation, are subject to tax as follows:

- If the CDL is collected, transported, and recycled by the dump truck operator, the charges are subject to B&O tax under the Service and Other Activities classification. RCW 82.04.290.
- If the CDL is collected and transported by the dump truck operator for recycling by a third party, the charges are subject to PUT under either the motor transportation or urban transportation classifications. See “Motor Transportation Services” in this ETA.

- If the CDL is collected, transported, and disposed of by the dump truck operator and will not be recycled, the charges are subject to B&O tax under the Service and Other Activities classification. In addition, the dump truck operator is required to collect the solid waste collection tax. See RCW 82.18.020.

Dump truck operators who engage in collecting, transporting, and disposing or recycling property should also refer to:

- **WAC 458-20-250** Solid waste collection tax.

Example 7: Dump truck operator recycling

Facts:

- Material Movers, Inc. (MM) is hired by DEF General Contractors, Inc. (DEF) to collect, transport, and recycle a mixture of dirt, sand, and rock from DEF's construction site to MM's recycling/processing facility.
- MM charges DEF \$1,000.

Result:

- Because MM is both transporting and recycling the CDL, the \$1,000 charged by MM is subject to service and other activities B&O tax.

Example 8: Third party recycling

Facts:

- MM is hired by DEF General Contractors, Inc. (DEF) to collect and transport a mixture of dirt, sand, and rock from DEF's construction site to a third party recycling facility.
- MM charges DEF \$1,000.

Result:

- The sale is properly classified as a transportation service because MM is solely transporting property for hire.
- The \$1,000 charged by MM is subject to PUT under either the motor transportation or urban transportation tax classification.

Example 9: Dump truck operator disposal services

Facts:

- MM is hired by DEF to collect and transport a mixture of dirt, sand, and rock from DEF's construction site to a third party facility for disposal, as the materials cannot be recycled.
- MM charges DEF \$1,000.

Result:

- Because MM is both transporting and disposing of the material, MM is not performing a transportation activity.
- Therefore, the \$1,000 charged by MM is subject to B&O tax under the Service and Other Activities classification.
- Additionally, MM is required to collect the solid waste collection tax.

Bare Rentals and Rentals of Equipment with an Operator

Business may rent their dump trucks either with or without operators. Rentals of dump trucks with or without an operator are generally retail sales that are not eligible for resale.¹ In situations involving a dump truck along with an operator, the following factors indicate that the activity is a rental of equipment with an operator:

- The dump truck operator is required to perform services at the direction of their customer;
- The dump truck operator's services are limited to those required to operate the dump truck only;
- The dump truck operator is not contractually responsible for the performance of other services; and,
- The dump truck operator is not transporting, recycling, or otherwise disposing of the property of others using public roads.

Typically, taxpayers offering services under this business model are operating their dump truck for use exclusively within the boundaries of a job site, where a general contractor is directing the operator as to where to position the dump truck for loading and dumping of materials within the job site.

Lessors of dump trucks with an operator should also refer to WAC 458-20-211, Leases or rentals of tangible personal property, bailments.

Example 10: Rental of dump truck with operator

Facts:

- Equipment for Hire, Inc. (EFH) leases two dump trucks with operators to Tall Building, LLC (TB) to be used at TB's construction site for a two week period.
- EFH employees (operators) will move the truck for purposes of collecting and dumping materials within the jobsite under the sole direction of TB.
- EFH's services are limited to the operation of the trucks.
- EFH charges TB \$10,000.

Result:

¹In certain instances equipment leased as a bare rental may be re-rented without intervening use. In these instances, the wholesaling B&O tax classification may apply. For more information see WAC 480-20-211.

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- The sale is properly classified as a rental of equipment with an operator and the \$10,000 charge is subject to B&O tax under the Retailing classification and retail sales tax must be collected from TB at the tax rate applicable to the location of TB's construction site.
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