

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

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Public Road Construction Materials – Measure of Tax

This excise tax advisory (ETA) addresses the measure of the manufacturing business and occupation (B&O) tax and use tax on materials incorporated into public road projects, such as building, repairing, or improving streets, highways, and easements owned by a municipal corporation or political subdivision of the state or by the United States. Public road contractors are also subject to other taxes, for example, the public road construction B&O tax which is measured by the total contract amount of the public road project. (See RCW 82.04.280 and WAC 458-20-171 for additional information regarding public road construction.)

Where building materials or components are fabricated at a location away from the construction job site, use tax and the manufacturing B&O tax are due. The measure of the taxes must correspond as nearly as possible to the gross proceeds from comparable sales of the building materials. “Comparable sales” means sales at comparable locations in this state of similar products of like quality and character, in similar quantities, under comparable conditions of sale, to comparable purchasers. In the absence of comparable sales as a guide to value, such value is determined upon a cost basis, which includes every item of cost attributable to the particular article, including direct and indirect overhead costs. (See RCW 82.04.450, WAC 458-20-112, and WAC 458-20-136.)

Conversely, fabricating done at the construction job site is inseparable from the constructing, improving, or repairing of a publicly owned road and, thus, retail sales or use tax applies only to the value of the materials delivered to the job site; the manufacturing B&O tax does not apply.

The following examples demonstrate this principle.

Articles Manufactured by a Public Road Contractor

ABC contracts to install steel bars, shaped to meet contract specifications, as part of a public road construction project for a city in Washington. As a public road contractor, ABC is the consumer of all items installed in the road.

If the steel bars are received at the job site and bent to shape at the job site, the Department treats the entire activity as public road construction. In this case, ABC would owe use tax on the value of the unbent steel bars, if ABC had not previously paid retail sales tax.

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However, if the steel bars are received at ABC's shop, bent there, and then delivered to the job site, ABC is a manufacturer of the bent steel bars. In this case, the measure of the use tax and the manufacturing B&O tax is the value of the bent steel bars. If there are no comparable sales, the value of the bent steel bars is measured by the cost of the steel bars plus the value of the labor and overhead needed to bend the bars. ABC would be able to deduct, for use tax purposes only, the cost of the steel bars if it had previously paid retail sales tax on its purchase of those bars.

Had ABC bent the steel bars at its shop and installed those bars into a road construction project for the State of Washington, ABC would not owe manufacturing or B&O tax on the steel bars. This is because constructing roads for the State of Washington is not public road construction under RCW 82.04.280.

Asphalt and concrete mixing

DEF contracts to construct a road for a county in Washington. As part of the construction project, DEF builds a temporary asphalt or concrete mixing plant in the general vicinity of the new road. For purposes of this example, presume all materials are purchased by DEF and delivered to the temporary mixing plant.

The "job site" includes asphalt and concrete mixing plants temporarily located for the primary purpose of servicing a particular public road construction contract. This applies only if the temporary mixing plant is built after the contract for constructing, improving, or repairing the public road is awarded to the contractor. The site of such plants need not be adjacent to the public road, highway, or bridge which is being constructed or improved, but must bear a reasonable relationship to the location of the job to be serviced.

When the temporary mixing plant is built after the award of the contract, the measure of the use tax is determined by the value of the materials used to create the asphalt or concrete and will not include the labor or overhead costs associated with mixing the asphalt or concrete.

If the plant is built prior to the award of the contract or doesn't otherwise qualify, then DEF is a manufacturer of the asphalt or concrete. In this case, the measure of the use tax and the manufacturing B&O tax is the selling price of comparable sales of the asphalt or concrete. If there are no comparable sales, the value of the asphalt or concrete will include labor, materials, and overhead costs. If DEF had previously paid retail sales tax on its purchase of materials incorporated into the asphalt or concrete, DEF is entitled to deduct the cost of those materials for purposes of determining its use tax liability.
