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Condominiums

1. If a residence condominium unit is constructed and sold by a speculative builder, but common usage areas have not been completed, must a builder pay business and occupation (B&O) tax under the retailing classification and collect retail sales tax on that part of the sales price attributable to construction of the common usage areas completed subsequent to the sale?

Washington law establishes that each residence condominium unit and its undivided interest in the common area is considered a single parcel and subject to taxation on that basis. RCW 64.32.190 provides that

Each apartment and its undivided interest in the common areas and facilities shall be deemed a parcel and shall be subject to separate assessments and taxation by each assessing unit for all types of taxes authorized by law including but not limited to special ad valorem taxes and special assessments.

As a result, the entire sales price of the parcel will be exempt from retail sales tax notwithstanding that the common usage areas are yet to be completed, and the builder will not be liable for B&O tax under the retailing classification for the subsequent construction of the common areas. This is true only where the living unit is completely constructed prior to sale. If the living unit is sold prior to its construction, then the entire sales price of the parcel is subject to retail sales tax and the builder is liable for B&O tax under the retailing classification. If the living unit is sold during its construction, then allocation would be required based upon that portion which is completed and that portion yet to be completed, with the latter portion being subject to retailing B&O tax and retail sales tax based upon its proportionate value as compared to the entire sales price of the parcel.

2. Does the construction and sale of the lower floors of a condominium make it necessary that the completion of the upper floors not yet sold be considered as retail construction work?

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WAC 458-20-170 provides that when a speculative builder sells property upon which he is presently constructing a building, all construction done subsequent to the date of such sale constitutes a retail sale. However, the completion and sale of lower units of a condominium has no bearing upon the retail sales taxability of the upper units. Each living unit and its respective share of common usage area is treated as a separate parcel for tax purposes. RCW 64.32.190. Therefore, the taxability of upper floor units will not be affected until sales of those units begin.