

# Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

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## **Bankruptcy Liquidations: Retail Sales and Use Tax**

Is property acquired through a bankruptcy liquidation sale exempt from retail sales or use tax?

The retail sales tax or use tax applies in connection with bankruptcy liquidation sales and other transfers under the Federal Bankruptcy Code which are not otherwise tax exempt under RCW Title 82 (excise taxes). The U.S. Supreme Court ruled:

It is evident that whatever immunity the bankrupt estate once enjoyed from taxation on its operations has long since eroded and that there is now no constitutional impediment to the imposition of a sales tax or use tax on a liquidation sale." *California State Board of Equalization v. Sierra Summit, Inc.*, 490 U.S. 844 (1989).

Bankruptcy trustees as agents of the debtor (or debtors in possession if applicable) are required to collect and remit retail sales tax to the State of Washington on sales that are not otherwise exempt (this liability is as agent for the debtor, not personal liability). Transferees must pay use tax on property acquired and used in Washington if no retail sales tax was paid.

Transfers of property between the bankruptcy trustee and the original debtor are exempt. Transfers of personal property (inventory for sale) back to original vendors who hold security interests continue to be exempt if the property is held for resale and there is no taxable use by the vendor. Debtors in possession under chapter 11 will continue to be required to pay any applicable taxes such as B&O taxes and collect and remit retail sales taxes which result from the continued operation of the business. All sales of tangible personal property, except for the sales of inventory, in bankruptcy are casual sales and not subject to the business and occupation tax.

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