

Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

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Deferred Sales Tax

This excise tax advisory explains the difference between deferred sales tax and use tax. It also discusses the circumstances under which a person may owe deferred sales tax and how to report the tax on the excise tax return.

The retail sales tax is imposed on persons who purchase nonexempt items of tangible personal property and retail services within the state as consumers. Sellers who make retail sales in the state are required to collect the retail sales tax from buyers and remit the tax to the Department. Any seller required to collect retail sales tax who fails to do so is liable for the full amount of the uncollected tax. The retail sales tax is measured by the selling price of the item sold. The selling price includes any freight or handling charges imposed by the seller regardless of whether such charges are separately stated in the sales contract or sales invoice.

Generally, there are two situations where a seller may be relieved of the duty to collect retail sales tax:

Situation 1: The seller receives a properly documented claim for tax exemption from the buyer; or

Situation 2: The seller receives a properly executed resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or a reseller permit (WAC 458-20-102) for sales made on or after January 1, 2010, from a buyer who normally engages in both consuming and reselling nonexempt items of tangible personal property, and the buyer cannot determine at the time of purchase whether the property will be consumed or resold.

Note: Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

If the seller fails to collect retail sales tax that is later determined to be due, the Department may proceed directly against the buyer to collect the tax. The retail sales tax may become due from the buyer under Situation 1 if events occurring after the sale fail to meet the requirements for tax exemption. In Situation

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2, the buyer is required to maintain records of the items consumed and remit the retail sales tax directly to the Department. The Department sometimes refers to the retail sales tax that may become due from the buyers in both situations as “deferred sales tax.” The tax is deferred because at the time of sale the facts giving rise to the tax liability are not yet known. Deferred sales tax does not refer to retail sales tax that is properly due at the time of sale that the seller mistakenly or purposefully fails to collect.

Deferred sales tax is not the same as use tax. Use tax is imposed on the use by a consumer of nonexempt tangible personal property within the state. The use tax does not apply when the acquisition or sale of the property has been previously subjected to the retail sales tax. “Use” for this purpose means the first act within the state by which a person takes or assumes dominion and control over an item of tangible personal property as a consumer, and includes installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within the state. RCW 82.12.010. The use tax is based on the value of property at the time of first taxable use within the state. Normally, the value of an item of property acquired by purchase is the amount paid by the buyer including freight, shipping, or transportation costs.

The following examples illustrate the difference between deferred sales tax and use tax:

Example A (deferred sales tax): A buyer provides a reseller permit to a seller under Situation 2 and later withdraws an item from inventory for use in the buyer’s business. The buyer is liable for retail sales tax on the selling price paid for the item when the item is withdrawn from inventory. The retail sales tax applies regardless of whether the item withdrawn from inventory is used inside or outside the state. The place of sale determines the local sales tax rate. (See also WAC 458-20-145, Local sales and use tax.)

Example B (use tax): The buyer in Example A acquires inventory under circumstances where the seller does not have a duty to collect retail sales tax in the first instance (for example, the seller is not required to register with the Department). The buyer later withdraws several items from inventory for use within the state. In this example, the buyer is liable for use tax based on the value of the withdrawn items at the time they are first used in the state. The location where the items are withdrawn from inventory for consumer use within the state determines the local use tax rate. If the items are immediately sent outside the state for use, no use tax is due because storage preparatory to use outside the state is not a taxable use.

The excise tax return does not have a special line for reporting deferred or unpaid retail sales taxes on purchases. Consequently, taxpayers should report these amounts on the use tax line of the return. The retail sales tax line on the return is designed for persons who make retail sales (sellers) and not for persons making taxable purchases. Therefore, in most instances the total sales subject to retail sales tax must agree with total retail sales reported for business and occupation tax purposes. If sales reported for retail sales tax and B&O tax purposes do not agree the return will be out of balance and may generate an error notice from the Department. The local tax component of deferred or unpaid retail sales tax should be reported in the local use tax area of the return using the appropriate location code corresponding to the place of sale determined.
