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B&O Tax Exemption for Property Managers (RCW 82.04.394)—On-Site Personnel Working at Multiple Properties

Overview

RCW 82.04.394 provides an exemption from the business and occupation (B&O) tax for amounts received by a property management company from the owner of a property for gross wages and benefits paid to on-site personnel.

RCW 82.04.394 was amended by 2ESSB 6143 Part XII (Chapter 23, Laws of 2010 1st Special Sess). This legislation restricted the exemption to those amounts received by:

- A “non-profit property management company” from the owner of a property, or
- A property management company from a “housing authority.”

Note: The effective date of this amendment to RCW 82.04.394 is June 1, 2010.

Definitions

For purposes of this exemption:

“Non-profit property management company means a property management company that is exempt from tax under 26 U.S.C. 501(c) of the internal revenue code, as it existed on January 1, 2010.

“Housing authority” means a city or county housing authority created pursuant to chapter 35.82.RCW.

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Conditions for exemption

There are several conditions that must exist for the exemption to apply. These conditions include:

1. The payment of the wages and benefits is made from the property manager's trust account that is required to be maintained under RCW 18.85.310;
2. The on-site personnel is a person that works primarily at the owner's property;
3. The on-site personnel's duties include collecting rent, leasing units, maintaining the property, or similar activities; and
4. There is a written property management agreement with respect to the on-site personnel that provides:
 - The ultimate liability for the wages and benefits is that of the property owner and not the property manager;
 - The property manager is liable for payment of the wages and benefits only as agent for the owner; and
 - The property manager is the agent of the owner with respect to the on-site personnel and that all actions, including but not limited to, hiring, firing, compensation, and conditions of employment taken by the property manager in respect to the on-site personnel are subject to the approval of the owner.

Note: RCW 82.04.394 contemplates that the above statutory requirements apply to each individual person acting as on-site personnel.

Scope of ETA

This excise tax advisory addresses only condition 2 above. The issue is whether the property manager qualifies for the exemption if the on-site personnel work at multiple properties.

Analysis

RCW 82.04.394 is phrased in the singular when referring to the owner of the property. This singular terminology in reference to the owner is unambiguous and means that the on-site personnel must primarily perform services for a single owner.

There is nothing in the statute that prohibits the on-site personnel from performing services at multiple properties owned by the same owner. However, if the on-site personnel work at multiple properties owned by different owners, then the exemption would only be available if a majority (more than 50%) of the services are performed for a single owner. In such a case, the exemption would apply only to the extent of that single owner's share of the on-site personnel's wages and benefits. *See also* Det. No. 03-0350, 23 WTD 229 (2004).

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Example

Assume that Nonprofit Property Manager manages properties for Owner 1, Owner 2, and Owner 3. Owner 1 owns two properties, Black Acres and Green Acres. Owner 2 owns White Acres. Owner 3 owns Brown Acres. Property Manager uses the services of individuals Bill, Fred, and Susan to collect rent, lease units, maintain the property, or perform similar activities for Owner 1, Owner 2, and Owner 3. The amount of time spent at each property is:

	Black Acres - Owner 1	Green Acres - Owner 1	White Acres - Owner 2	Brown Acres - Owner 3	Total
Bill	25%	30%	25%	20%	100%
Fred	15%	30%	55%	0	100%
Susan	30%	10%	30%	30%	100%

Under these circumstances, amounts received from Owner 1 to pay Bill satisfy condition 2 because Bill performs 55% of his services at properties owned by Owner 1. Likewise, amounts paid by Owner 2 for Fred's services satisfy condition 2. All other payments do not satisfy condition 2.
