

Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

ETA 3148.2009

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Public Road Construction Included in a Lump Sum General Construction Contract

Is the construction of publicly owned roads taxable as a retail sale where the contract or records of the contractor only show a lump sum amount and fail to provide a separate accounting for roads to be constructed as a part of a construction project?

Assume that Builder Inc. is hired on a lump sum contract to construct a large number of family housing units, related facilities, streets, and sidewalks within a subdivision. The contract did not itemize the work, leaving unstated the amount for construction of public roads.

According to RCW 82.04.190 "sale at retail" shall not include the sale of or charge made for labor and services rendered for:

... the building, repairing or improving of any publicly owned street, place, road, highway, bridge or trestle which is used or to be used primarily for foot or vehicular traffic...

Builder Inc. needs to prove that the public road work was performed and establish that the value as reported for excise tax purposes is reasonable to be taxable under RCW 82.04.280 "public road construction" rather than RCW 82.04.250 "retailing".

When a contract calls for the construction of publicly owned roads, Builder Inc. must pay use tax on the value of all materials used or consumed in performance of such work when purchases of such material have not been subjected to the retail sales tax.

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