# Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

ETA 3169.2011 Issue Date: December 28, 2011

## Sourcing Wholesale Sales of Non-Mobile Telecommunications Services

**Purpose & Scope**

The purpose of this ETA is to provide business and occupation tax (B&O tax) guidance for sourcing gross proceeds of wholesale telecommunications services (other than mobile telecommunications services) consistent with RCW 82.32.520(1) and (2) (section 520), as required by RCW 82.04.530 (section 530). This ETA does not address the sourcing provisions in RCW 82.32.520(3)(a)-(d).

The guidance and examples provided in this ETA contemplate that the wholesale telecommunications service is received entirely within Washington. However, the general principles provided apply equally to interstate wholesale services.

**Introduction & Background**

Washington imposes a B&O tax on persons engaging in business within this state. This includes the business of making "sales at wholesale." See RCW 82.04.270. "Sales at wholesale" include wholesale sales of telecommunications services as that term is defined in RCW 82.04.065; see also RCW 82.04.060(1)(g). Wholesaling B&O tax is imposed on gross proceeds of wholesale sales of telecommunications services sourced to Washington.

**Sourcing Generally**

A telecommunications service provider (other than a mobile telecommunications service provider) must calculate gross proceeds of wholesale sales in a manner *consistent* with the sourcing rules provided in section 520. Thus, for all telecommunications services other than mobile telecommunications services, gross proceeds of wholesale sales must be sourced in a manner *consistent* with Washington's retail telecommunications sourcing statute -- section 520.

**Sourcing Consistent w/ Section 520**

Section 530 requires that sourcing of wholesale gross proceeds be "consistent" with section 520. Section 530 only requires "consistency" with the sourcing principles in section 520 because section 520 was drafted with the sourcing of retail sales in mind and not wholesale sales.

This concept of "consistency" in section 530 may require different interpretations of how section 520 should be applied in the different factual context of wholesale sales sourcing. However, the principles underlying the sourcing methodologies contained in section 520 must remain consistent. The principles and examples contained in this ETA are intended to illustrate this concept of "consistency" for wholesale sales sourcing using section 520.

**Call-by-Call Basis**

For wholesale telecommunications sold on a call-by-call basis, the concepts of origination, termination and service address as described in section 520 apply to the *purchaser* of wholesale telecommunications rather than the end user/consumer of the retail telecommunications services. Please refer to the example below for further clarification.

Example 1

Bandiloo Teleco (Bandiloo) sells telecommunications services at wholesale to Zena Teleco (Zena), who then resells the services at retail to its customers, including Dave. Dave lives in Florida and makes a call to his friend Mary in Washington using Zena's services. Zena arranges for the call to be carried from Florida to Bandiloo's switching facility in Washington through contractual relationships with other telecommunications carriers. Bandiloo then carries the call from its Washington switching facility to Mary's house where the call terminates. In this respect, Bandiloo "terminates" the call in Washington for which it charges Zena on a call-by-call basis.

Because this service is billed on a call-by-call basis, the wholesale receipts must be sourced consistent with subsection 520(1). Under subsection 520(1), wholesale receipts from telecommunications services are sourced to Washington if:

(1) The call originates and terminates in Washington; or
(2) The call either originates or terminates in Washington and the service address is also in Washington.

Although Dave's retail call originates in Florida, the wholesale call originates at Bandiloo's switching facility in Washington. This is where Bandiloo begins providing the wholesale service to Zena, the wholesale customer. Additionally, the wholesale call provided by Bandiloo to Zena terminates in Washington at Mary's house. In this respect, the wholesale services provided by Bandiloo to Zena are strictly between Bandiloo's in-state switching facility and Mary's in-state home. Accordingly, the wholesale call originates and terminates inside Washington and therefore the wholesale receipts are sourced to Washington consistent with subsection 520(1).

**Other than Call-by-Call**

For wholesale telecommunications sold on an other than call-by-call basis, the concept of place of primary use (PPU) applies to the purchaser of the wholesale telecommunications rather than the end user/consumer of the retail telecommunications services. Additionally, the residential street address or the primary business address of the purchaser will *not* be used as the proxy for determining where the use of the service primarily occurs because these addresses may have no relationship to where the use of the service primarily occurs (see example below). Instead, the "service address" concept will be used as a proxy for determining where the service is primarily used. This is because the "service address" will more closely approximate the PPU in these wholesale transactions. Please refer to the example below for further clarification.

<u>Example 2</u>

Same facts as Example 1 above except that Bandiloo bills Zena on an other than call-by-call basis for wholesale telecommunications services between its switching facility in Washington and Mary's house where the call terminates. Additionally, for this example, Zena has its corporate headquarters in Iowa.

Because this service is billed on other than a call-by-call basis, the wholesale receipts must be sourced consistent with subsection 520(2). Under subsection 520(2), telecommunications services sold on an other than call-by-call basis are sourced to the customer's PPU. In section 520(4)(i) the term PPU is defined as:

> "… the street address representative of *where the customer's use of the telecommunications service primarily occurs*, which must be the residential street address or the primary business street address of the customer…"

Zena's "primary business street address" is in Iowa. However, in this example the services purchased at wholesale by Zena for the purpose of terminating calls are used entirely in Washington between Bandiloo's in-state switch and Mary's house. There is no use of the services in Iowa, "primarily" or otherwise. In this case Zena's wholesale use primarily occurs in Washington. Accordingly, Zena's PPU will follow its service address. In this case, Zena's service address will be either (1) the location of the telecommunications equipment (e.g. Bandiloo's switch) to which Zena's call is charged (if that is how the carrier bills), or (2) the origination point of the signal of the telecommunications services (e.g. Bandiloo's switch) if (1) does not apply. In either case the service address will be in Washington.

As discussed above, Bandiloo's switch address would be designated as the PPU for Zena because that switch address is consistent with the principal behind the PPU concept, which is to source telecommunications sales to a "… street address representative of where the [wholesale] customer's use of the telecommunications service primarily occurs…"

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**Alternative Methods Consistent with Section 520**

The Department acknowledges that sourcing wholesale sales of non-mobile telecommunications services in a manner consistent with section 520 may require, in addition to the principles explained above, alternative methodologies in order to appropriately apply the statute. To this end, a taxpayer may request that the Department approve an alternative method of sourcing by submitting a request for a tax ruling through the Department's web page at: http://dor.wa.gov/contactus/e-mail. If the alternative method is approved in writing by the Department, then a taxpayer may report using the approved alternate method.

If a Taxpayer wants to use an alternative methodology prior to or without receiving approval from the Department, the Taxpayer must notify the Department at the time of filing the first return using an alternative method and provide a brief description of the method employed and why the method is necessary. Taxpayers that file electronically may provide notice using “secure messaging” available through My Account, the Department’s secure online system (for more information you may call the Department at 1-800-647-7706). The same method must be used for all subsequent tax reporting periods unless the Taxpayer demonstrates another method is necessary using the same procedure discussed directly above. In these cases, if on review of a taxpayer’s records it is determined that the alternative method used does not fairly represent where the wholesale telecommunications should be sourced, then the Department may require the use of the method stated in this ETA or another alternative method for all periods subject to audit.

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