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Taxability of Cemetery Endowment Care Funds

Purpose

This Excise Tax Advisory (ETA) addresses the taxability of cemetery endowment care fees received from customers of a cemetery authority on sales of interment rights (e.g., graves, niches, or crypts). This ETA also addresses the taxability of investment income generated by the endowment care fund for use in maintaining the cemetery grounds.

This ETA does not address the taxability of prearrangement trust funds. For information on this and related topics, see WAC 458-20-153 *Funeral establishments* and WAC 458-20-154 *Cemeteries, crematories, columbaria*.

Definitions

For purposes of this ETA, the following definitions apply:

- "Cemetery authority" means an entity that has obtained a certificate of authority to operate a cemetery from the funeral and cemetery board, or any other entity that operates a cemetery that is not under the jurisdiction of the funeral and cemetery board. RCW 68.04.190.
- "Endowment care" or "endowed care" includes special care funds and all funds held for or represented as maintenance funds. RCW 68.05.030.

Background

A cemetery authority is required to establish and maintain an endowment care fund, unless exempt under RCW 68.40.095 or 68.40.100.

Pursuant to RCW 68.40.010, a cemetery authority is required to deposit ten percent of the gross sales price of an interment right, such as a grave, niche, or crypt, into an endowment care fund. If a cemetery authority sells an interment

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right at a price that is less than its current list price, or gives away, bequeaths, or otherwise gives title to an interment right, it must still deposit an amount into the endowment care fund at the rate at which the interment right would normally be endowed.

Under RCW 68.44.170, the income from the endowment care fund is to be used solely for the general care, maintenance, and embellishment of the cemetery as determined by the cemetery authority.

**Endowment Care
Fees Subject to B&O
Tax**

WAC 98-12-030 requires a cemetery authority to separately identify the endowment care fee on the contract with the customer. A cemetery authority will invoice and collect from its customer the ten percent endowment fee on the gross sale of an interment right for deposit into an endowment care fund.

The payment of the endowment fee by the customer to the cemetery authority represents value proceeding or accruing to the cemetery authority by reason of the cemetery authority's business. Therefore, the fee is gross income to the cemetery authority under RCW 82.04.080. The cemetery authority cannot exclude the endowment fee as an advancement under WAC 458-20-111 because it is liable for contributing this amount to the fund under RCW 68.40.010. This liability also means the endowment contribution it receives from the purchaser of interment rights is not a bona fide contribution deductible under RCW 82.04.4282 as, under these circumstances, the contribution lacks a gratuitous purpose.

The endowment fee is subject to the business and occupation (B&O) tax under the Service and Other Activities classification. The cemetery authority may not deduct endowment fees received from its customers from its gross income.

Examples

The following examples identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

In addition to illustrating the taxability of endowment care fees, the examples also provide general reporting instructions for sales of other products or services by cemeteries. Refer to WAC 458-20-153 and 458-20-154 for more information on the taxability of sales or products sold by cemeteries.

Example 1 (standard sale of interment right):

- **Facts:** Woodland Cemetery enters into an agreement with a customer for the sale of a grave site (interment right), grave liner, grave marker, liner setting fee, marker setting fee, and grave opening/closing. Woodland Cemetery provides the following invoice to the customer:

Sample Invoice

Description	Charge
Grave Site (Interment Right)	2,000
Grave Liner	1,000
Grave Marker	400
Grave Liner Installation	400
Grave Marker Installation	400
Endowment Care Fee*	200
Grave Opening/Closing	500
Total Charges	4,900

*Fee is based on the \$2,000 listed selling price of the grave site.

- **Result:** Woodland Cemetery is required to report its income from the sale as follows:
 - Report \$2,200 under the Retailing B&O tax classification and collect and remit retail sales tax for the sale of the grave liner, grave marker, and installation charges.
 - Report \$2,700 under the Service and Other Activities B&O tax classification for the sale of the grave site, endowment care fee, and grave opening/closing.

Example 2 (sale of interment right less than current list price):

- **Facts:** Mighty Oaks Cemetery enters into an agreement with a customer for the sale of a niche (interment right), urn, niche plaque, opening/closing, and nicheside service. Mighty Oaks Cemetery offers the customer a reduced price for the interment of 75 percent off the current listed price of \$1,000. Mighty Oaks Cemetery provides the following invoice to the customer:

<i>Sample Invoice</i>	
Description	Charge
Niche (List Price)	1,000
<i>Less: Discount on Niche</i>	<i>(750)</i>
Endowment Care Fee*	100
Urn	50

Niche Plaque	150
Opening/Closing	100
Nicheside Service	500
Total Charges	1,150

*Fee is based on the \$1,000 listed selling price of the niche.

- **Result:** Mighty Oaks Cemetery is required to report its income from the sale as follows:
 - Report \$300 under the Retailing B&O tax classification and collect and remit retail sales tax for the sale of the urn, niche plaque, and opening/closing.
 - Report \$850 under the Service and Other Activities B&O tax classification for the sale of the niche, endowment care fee, and nicheside service.

Example 3 (interment right gifted):

- **Facts:** Willow Creek Cemetery enters into an agreement with a customer for the sale of a grave liner, grave marker, vase, liner installation, and marker installation services. Willow Creek Cemetery gifts a grave site (interment right) and opening/closing to the customer. The current listed price for a similar grave is \$2,000. Willow Creek Cemetery provides the following invoice to the customer:

<i>Sample Invoice</i>	
Description	Charge
Grave Site (List Price)	2,000
<i>Less: Discount on Grave Site</i>	<i>(2,000)</i>
Endowment Care Fee*	200
Grave Liner	900
Grave Marker	500
Vase	200
Liner Installation	350
Marker Installation	350
Opening/closing	500

<i>Less: Discount on Opening/closing</i>	(500)
Total Charges	2,500

**Fee is based on the \$2,000 listed selling price of the grave site.*

- **Result:** Willow Creek Cemetery is required to report its income from the sale as follows:
 - Report \$2,300 under the Retailing B&O tax classification and collect and remit retail sales tax for the sale of the grave liner, grave marker, vase, and installation charges.
 - Report \$200 under the Service and Other Activities B&O tax classification for the endowment care fee.

Investment Income from a Cemetery Endowment Care Fund

A cemetery authority may use investment income generated by the endowment care fund to provide for the general maintenance and care of the cemetery grounds.

RCW 82.04.4282 provides a deduction for amounts derived from bona fide endowment funds. Therefore, the investment income generated by and withdrawn from the endowment care fund is not taxable income to the cemetery authority.

In accordance with RCW 82.04.050, the purchase of materials and contracted labor for the maintenance and care of cemetery grounds by a cemetery authority is subject to retail sales tax.

Example 4 (use of investment income from a cemetery endowment care fund):

- **Facts:** Harvest Home Cemetery needs to re-sod a portion of its cemetery grounds. Harvest Home receives \$2,000 from the accumulated interest in its cemetery endowment care fund account, purchases \$1,000 of sod, and pays \$1,000 to a contract landscaper to install the sod.
- **Result:** Harvest Home Cemetery's reporting obligations are as follows:
 - Report \$2,000 under the Service and Other Activities B&O tax classification and take a deduction for the full \$2,000, resulting in no B&O tax due. Harvest Home Cemetery is not subject to B&O tax on the \$2,000 of interest income generated by the endowment care fund.
 - Pay retail sales tax on its purchase of sod and landscaping services.
