

Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

ETA 3225.2021

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Construction on Real Property “of or for” the United States

Purpose

This Excise Tax Advisory (ETA) explains how the ownership of land affects the determination of whether a person is a federal government contractor (government contractor) in constructing, repairing, decorating, or improving buildings or structures under, upon, or above real property “of or for” the United States.

This ETA is adopted consistent with *Morpho Detection, Inc. v Department of Revenue*, 194 Wn. App. 17, 371 P.3d 101 (2016), *pet. rev. den.* 186 Wn.2d 1010, 380 P.3d 502 (2016), a case in which the court addressed application of the use tax for contractors who install equipment for the federal government, but not on real property owned or leased by the federal government. See Example 3 of this ETA.

Taxability of government contractors

Government Contracting

- The sale of labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property *of or for* the United States is not a retail sale, and thus, such labor and services are not subject to retail sales tax. RCW 82.04.050(12).
- The sales tax exemption for labor and services related to government contracting does not apply to the personal property incorporated into such projects.
- If sales tax has not been paid, these government contractors are defined as “consumers” of all tangible personal property incorporated into, installed in, or attached to buildings and other structures, and will owe use tax based on the value of this property. RCW 82.04.190(6).

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- Government contractors engaged in these activities are taxable under the government contracting business and occupation (B&O) tax classification pursuant to RCW 82.04.280(1)(g).

Liability as a consumer

As a consumer, a government contractor must pay retail sales or use tax on the purchase or use of all tangible personal property used in its government contracting construction activities. For more information about the taxability of government contractors, refer to WAC 458-20-17001 *Government contracting – Construction, installations, or improvements to government real property*.

For purposes of this ETA, “United States” means the federal government, including the executive, legislative, and judicial branches, its departments, and federal entities exempt from state or local taxation by specific federal statutory exemption. For more information about which entities are considered part of the federal government, refer to WAC 458-20-190 *Sales to and by the United States and certain entities created by the United States – Doing business on federal reservations – Sales to foreign governments*.

When construction is performed “of or for” the United States

A government contractor is a consumer of the tangible personal property used in its construction activities when performed

- on real property *of* the U.S. government, or
- *for* the federal government.

The examples below illustrate when construction is performed “*of or for*” the U.S. government. These examples identify a number of facts and then state a conclusion. They are provided only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

Example 1 - *Contractor contracts directly with the U.S. government, and the U.S. government owns the real property.*

- **Facts:** ABC Construction (ABC) enters into a contract with the U.S. Department of Defense to construct new barracks on the Joint Lewis-McChord military base, which is federal government property. ABC is constructing new buildings upon real property *of* the U.S. government. ABC is also performing the construction *for* the U.S. government.
 - **Result:** ABC is performing government contracting, and must pay government contracting B&O tax. As a consumer, ABC must pay retail sales or use tax on the materials permanently installed or incorporated into the real property in the construction of the barracks.
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Example 2 - *Contractor contracts directly with the U.S. government, and the U.S. government has a leasehold interest in the real property.*

- **Facts:** DEF Contracting, Inc. (DEF) contracts directly with the U.S. Department of Defense to build a new military recruiting office. The recruiting office is located in a privately owned strip mall. The Department of Defense has a lease for the property in the strip mall where the new recruitment center will be located. The construction activities are performed *for* the U.S. government, even though the U.S. government does not own the property.
- **Result:** DEF is performing government contracting and must pay government contracting B&O tax. As a consumer, DEF must pay retail sales or use tax on the materials permanently installed or incorporated into the real property in the recruitment center construction.

Example 3 - *Contractor contracts directly with the U.S. government, but the U.S. government neither owns nor has a leasehold interest in the real property.*

- **Facts:** CBX Systems (CBX) contracts with the Homeland Security Department to build inspection systems permanently installed for inbound cargo containers at a Puget Sound international port. The Homeland Security Department does not own or have a leasehold interest in any of the real property at the port. The construction activities are performed *for* the U.S. government.
 - **Result:** CBX is performing government contracting, and must pay government contracting B&O tax. As a consumer, CBX must pay retail sales or use tax on the materials permanently installed or incorporated into the real property in the construction of the inspection systems.
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