

# Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

ETA 3226.2021

Issue Date: July 1, 2021

## Applicability of Leasehold Excise Tax to Leases of Dark Fiber from Public Owners

### Purpose

The Department of Revenue is issuing this Excise Tax Advisory (“ETA”) to provide information about when the lease of dark fiber from public owners is subject to the Leasehold Excise Tax (“LET”).

This ETA is effective July 1, 2021. For prior tax periods, the Department will accept a taxpayer’s reporting if the taxpayer made a good faith effort to comply with its reporting requirements. In any event, the Department will not issue refunds for taxes validly paid.

This ETA supersedes any previous rulings or written reporting instructions provided to taxpayers that conflict with the guidance in this ETA.

### Definitions

For the purposes of this ETA, the following definitions apply:

*Competitive Telephone Services (CTS)* is the provision by any person of telecommunications equipment or apparatus, or services related to the equipment or apparatus. RCW 82.04.065(5).

*Telecommunications Services* are services that transfer, convey or route voice, data, audio, video or any other information or signals to a point, or between or among points. RCW 82.04.065(27).

*Dark fiber* is installed fiber optic cabling that has not been “lit” with a laser and associated equipment. As sold, it does not transmit, convey or route signals. It includes providing access to an unlit fiber optic cable and any related services, such as repair, installation, and maintenance. Often, a consumer leases some or all

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strands of the fiber optic cables and attaches its own equipment to light the fibers in order to provide bandwidth and services to its customers. For these reasons, dark fiber is considered a CTS, as defined in RCW 82.04.065(5), and does not fall within the definition of a telecommunications service contained in RCW 82.04.065(27). See ETA 3171.

*Leasehold interest* means an interest in publicly-owned real or personal property via a lease, permit, license or any other written or verbal agreement between the public owner of the property and a person who would not be exempt from property taxes if that person owned the right to possess and use the property. See RCW 82.29A.020(1)(a).

*Leasehold Excise Tax (LET)* is a tax on the act or privilege of occupying or using public property through a leasehold interest. The tax is in lieu of the property tax. RCW 82.29A.010 et seq.

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**Lease of Dark Fiber is Subject to LET**

When a private lessee, such as a telecommunications company, leases dark fiber from a public owner (e.g., a Public Utility District), the private lessee possesses a leasehold interest in the dark fiber. The private lessee is granted possession and use of public personal property (the dark fiber), including the right to connect equipment to “light” the fiber optic cable. The right to “light” specific fiber optic strands to enable the transmission of voice and data communications provides the private lessee some identifiable dominion and control (possession) over a defined area. Therefore, the LET applies to the lease of dark fiber from a public owner to a private lessee. The public owner must collect LET from its lessee and remit it to the Department.

NOTE: If the lessee would otherwise be exempt from property tax on the dark fiber had it owned the dark fiber, there is no leasehold interest and the lease would not be subject to LET. For more information on LET exemptions, refer to WAC 458-29A-400.

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**Applicability of B&O and Retail Sales Taxes**

In general, the lease of dark fiber discussed in this ETA is also subject to B&O and retail sales taxes. For additional information, please see ETA 3171 – *Taxation of Dark Fiber (unlit fiber optic cable)* and ETA 3193 – *Sourcing Dark Fiber Sales*.

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