

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

ETA 3164.2011

Issue Date: January 18, 2011

This ETA is cancelled effective June 6, 2019. There is no longer a need for this ETA. Statute as interpreted in 36 WTD 042 (2017) and case law have clarified the requirements that must be met in determining whether Leasehold Excise Tax is owed. Therefore, ETA 3164 is being withdrawn as it no longer sets out the Department's interpretation.

Public Utility Pole Attachment Contracts

Background

Private lessees pay leasehold excise tax (LET) for the privilege of occupying or using publicly owned real or personal property through a leasehold interest. Public entities collect the tax from the private lessee, or the sublessee if the lessee is also a tax-exempt public entity. If the public entity fails to collect the tax, the Department of Revenue may collect the tax directly from the lessee/sublessee.

Scope of ETA

This excise tax advisory explains the application of LET to utility pole attachment contracts that allow a private lessee/sublessee access to a publicly-owned utility pole for the purpose of attaching the lessee's/sublessee's own wires and/or cables to the poles.

Conditions under which LET applies to pole attachments

LET applies to such utility pole attachment contracts only when the following criteria are met:

- (1) The pole is owned by a public entity;
- (2) The pole attachment contract grants the private lessee/sublessee the right to occupy a specifically identified location on the pole for a period of _____ onsecutive days or longer; and
- (3) The lessee/sublessee has unrestricted access to the utility pole during that time period to use and maintain the pole attachments.

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