



# Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

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NUMBER: 3068.2009 (First Revision)

ISSUE DATE: December 28, 2009

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## **Taxability of Highway Construction Contract Projects Administered by Washington State Department of Transportation**

The term "construction" means the building, repairing, or improving of a publicly owned highway, street, place, or road as defined in WAC 458-20-171.

RCW 82.04.050 defines state highway construction contracts as retail sales. State highway contracts include:

1. Where title to the land upon which the highway, street, place, or road is being constructed vests in the state of Washington, the construction contract is a retail sale and retail sales tax shall be imposed upon the full contract price and separately billed.

Sales to prime contractors and subcontractors of materials which become a component part of the highway, street, place, or road being constructed without any intervening use are for resale and are not subject to the retail sales tax when the proper documentation is presented at time of purchase. The seller must obtain a resale certificate for sales made before January 1, 2010, or a reseller permit for sales made on or after January 1, 2010, from the buyer to document the wholesale nature of any sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

The retail sales tax applies upon sales to contractors of machinery, equipment, and consumable supplies purchased for the contractor's own use.

2. The tax liability outlined in #1 above shall also apply to construction of highways under the following circumstances:

- a. Construction across state owned school trust lands.
- b. Construction across railroad owned property when the state has an easement or right-of-way over the property.

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**All ETAs were cancelled on February 2, 2009 and those which had a continued use were rewritten and reissued using a new numbering system. The new ETAs are numbered using the following format 3nnn.yyyy. The Department of Revenue issued ETA 3001.2009 which includes a cross reference table showing the old and new ETA numbers for those ETAs that were rewritten.**

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- c. Construction of service or frontage roads on limited access facilities where they fall within the state right of way of the main highway.
  - d. Construction of service or frontage roads falling outside the main right of way but where the state has acquired substantially all of the additional right of way required.
  - e. Construction of cul-de-sacs within the right of way of the main highway.
  - f. Construction of cul-de-sacs outside the main right of way where the state has acquired substantially all of the additional right of way required.
  - g. Construction across federally owned lands where the federal government has granted the state an easement for the right of way.
  - h. Construction across lands acquired for the state by the federal government in federal court proceedings after transfer of title is accomplished from the federal government to the state.
3. Where the highway, street, place, or road is being constructed upon publicly-owned land, the title to which does not vest in the state, contractors are taxable under the public road construction classification upon the total contract price. The retail sales tax does not apply upon any portion of the charge made by such contractors.

The retail sales tax or use tax applies upon the sale to or use by such contractors of all materials, equipment, and supplies consumed in the performance of such contracts.

4. The tax liability outlined in #3 above shall apply to the construction of highways under the following circumstances:

- a. Construction upon city streets where title to the streets remains in the city though the state may let and administer the contract.
- b. Construction upon county roads under like circumstances.
- c. Construction of service or frontage roads over city streets or county roads, but where the substantial portion of the right of way remains in the city or county.
- d. Construction of cul-de-sacs under like circumstances.
- e. Construction beyond the limits of limited access facilities for purposes of bringing existing city streets or county roads up to higher standards at interchanges, the streets and roads remaining substantially in the ownership of the cities or counties.
- f. Construction across federally owned land where the state has only a special use permit or temporary license to enter and construct.
- g. Construction upon land acquired for the state by the federal government in federal court proceedings, but before transfer of title to the state.

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