

# Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

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## **Statute of Limitations Is Not a Defense When a Material Fact Is Misrepresented**

Is an additional tax assessment barred by the four-year statute of limitations when the business activity was registered as originating a year later than the factual opening date?

When a taxpayer registers with the Department stating the taxpayer commenced business a year later than it actually did, this constitutes the misrepresentation of a material fact by the taxpayer as to the first year of business. A misrepresentation of a material fact is an exception to the four year limitation period for assessment.

RCW 82.32.050 states:

"No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except

. . . (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer. . . "

The statute does not require that the misrepresentation be willful or malicious. If the taxpayer had stated the correct opening date at the time of registration, the tax due for the unreported periods would have been collected at that time. RCW 82.32.050 is designed to address this type of situation. Excise taxes are self-assessing and the burden of responsibility for filing tax returns and accurately reporting true tax liability thereon is imposed upon the taxpayer. RCW 82.32A.030.

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