

State Ruling

204-459, Excise Tax Advisory No. 3149.2019-- Sales and use-- Business and occupation tax specific businesses-- Transportation services-- Freight forwarders

¶204-459. Excise Tax Advisory No. 3149.2019, Washington Department of Revenue, May 6, 2019.

Sales and use: Business and occupation tax specific businesses: Transportation services: Freight forwarders.— The Washington Department of Revenue has issued an excise tax advisory (ETA) discussing the taxability of gross income received by freight forwarders and the deductions and exclusions that may apply to that gross income. The taxability of gross income received by a freight forwarder depends on whether the activity performed qualifies the freight forwarder as a "motor transportation business" or "urban transportation business." Further, the ETA discusses, among other topics, the conditions when a freight forwarder qualifies as a motor or urban transportation business; the conditions when a freight forwarder does not qualify as a motor or urban transportation business; contractual liability of a freight forwarder; deduction from public utility tax for services jointly provided; exclusion from B&O tax for advances and reimbursements; and deduction for interstate transportation.

Department of Revenue *Washington State*

Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

ETA 3149.2019

Issue Date: May 6, 2019

Taxability of Gross Income Received by Freight Forwarders

Purpose

This Excise Tax Advisory (ETA) discusses the taxability of gross income received by freight forwarders and the deductions and exclusions that may apply to that gross income.

This ETA does not apply to a marketplace facilitator, as defined in RCW 82.13.010(3) ¹, who arranges for the transportation of property sold on its marketplace, such as a food delivery service. ²

What is a freight forwarder?

For the purpose of this ETA, a "freight forwarder" is a business that arranges for the transportation of its customers' property. A freight forwarder **may or may not**:

- perform the actual physical transportation of the property transported, or
- have a contractual liability to its customer for the transportation of the property.

How is gross income received by a freight forwarder taxable?

The taxability of gross income received by a freight forwarder depends on whether the activity performed qualifies the freight forwarder as a "motor transportation business" or "urban transportation business." RCW 82.16.010(6) generally defines a motor transportation business as a business that operates a motor vehicle for hire to transport people or property not owned by the business. RCW 82.16.010(12) generally defines an urban transportation business as a business that operates a motor vehicle for public use and for hire to transport people or property not owned by the business within certain specified distances of a city or town.

If a freight forwarder qualifies as a motor or urban transportation business, its income is subject to the Public Utility Tax (PUT). If a freight forwarder does not qualify as a motor or urban transportation business, its income is subject to the business and occupation (B&O) tax.

When is a freight forwarder a motor or urban transportation business?

Assuming all other statutory requirements are met, to qualify as a motor or urban transportation business and have its gross income subject to the PUT, a freight forwarder must either:

- physically transport its customer's property, **or**
- be contractually liable for the transportation of its customer's property.

The amounts received are taxable under the motor or urban transportation PUT classifications. For additional information on all of the statutory requirements and the difference between the motor and urban transportation PUT classifications, refer to RCW 82.16.010 and WAC 458-20-180 *Motor carriers*.

When is a freight forwarder *not* a motor or urban transportation business?

If a freight forwarder does not physically transport its customer's property (i.e., a third-party carrier provides the transportation), **and** is not contractually liable for the transportation of its customer's property, then it is not a motor or urban transportation business, and its gross income is subject to the B&O tax.

A freight forwarder that neither physically transports its customer's property nor is contractually liable for the transportation of its customer's property is considered a freight broker. Amounts received for activities engaged in by freight brokers are taxable under the service and other activities B&O tax classification. RCW 82.04.290.

Freight brokers that conduct international freight brokering activities are subject to the international freight forwarder B&O tax classifications. RCW 82.04.260.

What is contractual liability?

For purposes of this ETA generally, a freight forwarder has contractual liability for the transportation of its customer's property if it is contractually (but not necessarily physically) responsible for transporting the property using motor vehicles, and is liable for any damages or loss in the transportation of that property.

Under most circumstances, the bill of lading can be used to determine whether the freight forwarder is contractually liable.

Deduction from PUT for services jointly provided

Freight forwarders that are motor or urban transportation businesses may deduct from their gross income subject to PUT, amounts they actually pay to third-party carriers who assist in physically transporting the property as consideration for services jointly provided. These amounts may be deducted regardless of whether the third-party carrier physically transports all or a portion of the property. Refer to RCW 82.16.050(3) and WAC 458-20-179(202)(f) for more information about the services jointly provided deduction.

Exclusion from B&O tax for advances and reimbursements

The services jointly provided deduction is not available to freight broker and international freight forwarder activities. However, such businesses may exclude gross income subject to B&O tax for qualifying advances or reimbursements. To properly exclude gross income as an advance or reimbursement, the taxpayer must be acting as an agent and meet all of the requirements of WAC 458-20-111, *Advances and reimbursements*. For example, amounts received and paid to third-party carriers who physically transport the property may be deductible if all of the requirements of WAC 458-20-111 are met.

Deduction for interstate transportation

Under certain circumstances, a freight forwarder may deduct from gross income subject to the PUT, amounts charged for property transported across the state's boundaries.

If a freight forwarder is a motor or urban transportation business, and its gross income is subject to the PUT, then a deduction from gross income may be taken for all amounts attributed to the transportation of property by motor transportation equipment where the origin or destination of the haul is outside of Washington. For additional information on the deduction for interstate transportation, refer to WAC 458-20-180 *Motor carriers* and WAC 458-20-193D *Transportation, communication, public utility activities, or other services in interstate or foreign commerce*.

If a freight broker or international freight forwarder is not a motor or urban transportation business, and its income is subject to the service and other activities or international freight forwarder B&O tax, respectively, then income it earns from arranging for the transportation of property must be attributed consistent with WAC 458-20-19402 *Single factor receipts apportionment— Generally*.

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Footnotes

1	Effective July 1, 2019, the definition of "marketplace facilitator" will be found in RCW 82.08.010.
2	"Food delivery services" typically include restaurants and other food-delivery platforms that allow customers to place a food order to be picked up by a driver and delivered to the customer.