

# Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

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## Transactions Between Related Entities

The Department has addressed the question of transactions between related entities on many occasions. In an effort to simplify the information available to taxpayers, the Department has consolidated these excise tax advisories into a single document.

WAC 458-20-203 (Rule 203) states:

Each separately organized corporation is a "person" within the meaning of the law, notwithstanding its affiliation with or relation to any other corporation through stock ownership by a parent corporation by the same group of individuals.

Each corporation shall file a separate return and include therein the tax liability accruing to such corporation. This applies to each corporation in an affiliated group, as the law makes no provision for filing of consolidated returns by affiliated corporations or for the elimination of intercompany transactions from the measure of tax.

Each unincorporated association organized under the Massachusetts Trust Act of 1959 (chapter 23.90 RCW) is likewise taxable in the same way as are separate corporations.

The principles of Rule 203 apply to all business organizations including but not limited to limited liability companies (LLC), limited partnerships, and joint ventures. See also WAC 458-20-170(2)(f).

While intra-company transactions are not taxable (See WAC 458-20-201), business transactions between different persons are subject to taxation unless there is a specific deduction or exemption. The fact that entities are related does not change the fact that they are separate persons for tax purposes. Rule 203. *Washington Sav-Mor Oil Co. v. Tax Comm.*, 58 Wn.2d 518 (1961). The following examples are situations where the business and occupation (B&O) tax, and retail sales tax if applicable, will apply unless a specific exemption applies.

1. Charges made by a parent entity to its affiliates for management services. The fact that the creation of affiliated entities was because of legal technicalities is immaterial.

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2. Charges made by A to B (A and B are affiliated entities) for the proportional share of administrative salaries incurred for another affiliate; even though no profit is received by A from performing the administrative tasks.
3. Assume C operates a sole proprietorship and is also the sole shareholder and officer of a corporation. The corporation enters into a contract to construct a building. Employees of the sole proprietorship perform the actual construction. The third party pays the corporation for the building construction and the corporation pays the sole proprietorship. In this case, the payment to the sole proprietorship is subject to B&O tax.
4. Where an LLC enters a contract to supply a third party with tangible personal property and an affiliate of the LLC ships the tangible personal property directly to the third party who pays the LLC and the LLC pays funds to the affiliate. The LLC is subject to B&O tax on its receipts from the third party and the affiliate is subject to B&O tax on the amounts received from the LLC.
5. Where D performs research and development work which is used by it and two affiliates and each affiliate pays D 1/3 of the costs associated with the research and development, D's receipt of the payments is subject to B&O tax.
6. Where a partnership is formed for the purpose of owning and operating facilities that are only used by the partners and the partnership charges each partner for providing the facilities, the payments received by the partnership are subject to B&O tax.
7. A sole proprietorship (E) enters into a contract to build a road. E then incorporates the sole proprietorship, but the contract for the road construction remained between E and the landowner. The corporation performs that actual road construction and E pays the corporation for the work with funds received from the landowner. Both E and the corporation are liable for B&O tax on their receipts.

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