

Excise Tax Advisory

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National Streamlined Sales and Use Tax Agreement-- Definition of "Tangible Personal Property"

As a result of legislation requested by the Department of Revenue (Department) in 2003, Washington's sales and use tax statutes were modified to implement many provisions of the national Streamlined Sales and Use Tax Agreement (Agreement). See chapter 168, Laws of 2003. The legislation adopted several uniform definitions from the Agreement, including a definition of "tangible personal property." This advisory explains the tax implications of the definition of tangible personal property regarding the taxability of steam and electricity for purposes of retail sales and use taxes, business and occupation (B&O) tax, and public utility tax.

What is tangible personal property?

"Tangible personal property" is defined as personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software. RCW 82.08.010 and chapter 168, Laws of 2003. This definition is effective July 1, 2004, and it only applies for purposes of retail sales and use taxes imposed under chapters 82.08 and 82.12 RCW.

Retail sales and use taxes

The Department has historically considered steam, electricity, and electrical energy not to be tangible personal property. Thus, the sale or use of steam, electricity, and electrical energy has never been subject to retail sales or use taxes. Although effective July 1, 2004, tangible personal property is defined to include steam and electricity for purposes of retail sales and use taxes, the legislation included specific retail sales and use tax exemptions for the sale or use of steam, electricity, and electrical energy in order to maintain the historical tax treatment of these energy sources. See RCW 82.08.950 and 82.12.950.

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Public utility and B&O taxes

Because the term "tangible personal property" is used throughout Title 82 RCW, the Department recognized that questions might be raised about whether the new definition of tangible personal property in RCW 82.08.010 applies to taxes, credits, deferrals, deductions, and exemptions provided outside of chapters 82.08 and 82.12 RCW. Therefore, the Department included in its 2003 request legislation a provision that when the terms "ingredient," "component part," "incorporated into," "goods," "products," "byproducts," "materials," "consumables," and other similar terms denoting tangible items that may be used, sold, or consumed are used in Title 82 RCW, the terms do not include steam, electricity, or electrical energy. RCW 82.02.220. The same legislation also specifically provides that the term "tangible personal property," as used in chapter 82.04 RCW, does not include steam, electricity, or electrical energy. RCW 82.04.216.

The intention and effect of RCW 82.02.220 and 82.04.216 is to sustain, for purposes other than retail sales and use taxes imposed under chapters 82.08 and 82.12 RCW, the Department's long-standing position that steam, electricity, and electrical energy are not tangible personal property. Thus, persons engaging in the business of operating a plant for the production of steam for hire or sale continue to be subject to B&O tax under the service and other activities classification. For more information regarding the taxability of persons who produce steam, refer to WAC 458-20-121 (Sales of heat or steam -- Including production by cogeneration). Likewise, persons engaging in the business of generating, producing, or distributing electrical energy for hire or sale remain subject to public utility tax under the light and power business classification. For more information regarding the public utility tax, refer to WAC 458-20-179 (public utility tax).
