

Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

ETA 3201.2017

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Disclosure of Confidential Taxpayer Information at the Board of Tax Appeals or a Court

Purpose

This Excise Tax Advisory (ETA) addresses the Department of Revenue's (Department) policy and process with respect to the disclosure of confidential taxpayer information (tax information) when such disclosure is required by the Board of Tax Appeals or a court in the context of a hearing or trial.

Background

The Department is required to maintain in strict confidence "tax information" associated with specific taxpayers. RCW 82.32.330(2). "Tax information" includes the taxpayer's identity, certain financial information, and "...other data received by, recorded by, prepared by, furnished to, or collected by...the Department..." RCW 82.32.330(1)(c). Under the Department's general policy, it will not disclose any tax information, even in redacted form, except as permitted by law.

The Board of Tax Appeals or a court may issue an order compelling the Department to disclose tax information to an unrelated third party. The Department will oppose these requests and will invoke its statutory privilege not to disclose the tax information pursuant to RCW 82.32.330, but in some instances, the Department may ultimately be compelled to disclose tax information in a redacted form in the course of litigation.

Process

Objection to Discovery

The Assistant Attorneys General, who represent the Department in litigation, invoke the statutory privilege created by RCW 82.32.330(2) in opposition to discovery requests for tax information relating to a non-party taxpayer. Unless the information sought is disclosable under a specific statutory exception set forth in RCW

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82.32.330(3), the Department's counsel will not voluntarily disclose third-party tax information sought through discovery.

Protective Orders

When efforts to resolve discovery disputes informally are unsuccessful, the Department's counsel may move for a protective order to prohibit discovery of confidential tax information, or oppose a motion to compel such discovery. If discovery is ordered over the Department's objection, the Department's counsel will seek a protective order to bar the re-disclosure of confidential tax information.

Notice of Disclosure

If the Board of Tax Appeals or a court orders the Department to disclose tax information involving a non-party taxpayer, the Department's counsel will notify the taxpayer.

Redaction of Taxpayer Information

If the Department is compelled to disclose tax information, the Department's counsel will use its best efforts to redact all information that would create a risk of identification of the non-party taxpayer. The Department's counsel may consult with the non-party taxpayer to determine what should be redacted.
