



# Excise Tax Advisory

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Excise Tax Advisories (ETA) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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## **Fund-raising Activities of Public Schools, Associated Student Body Groups, and Parent Teacher Associations**

Since Senate Bill (SB) 6599 (Chapter 336, Laws of 1998) was enacted, the Department of Revenue has received many questions concerning whether fund-raising activities conducted by school districts, Parent Teacher Associations (PTAs) and Associated Student Body (ASB) groups qualify for the bill's two fund-raising exemptions.

This advisory outlines how the fund-raising exemptions apply to school districts, PTAs and ASB groups until such time as the information is incorporated into the applicable rules through the Department's rule-making procedure.

### **The Exemptions**

SB 6599, now codified as Revised Code of Washington (RCW) 82.04.3651 and 82.08.02573, broadens and simplifies previous exemptions for fund-raising activities conducted by nonprofit organizations. It provides a two-prong test to determine whether an entity is eligible to take advantage of the tax exemptions. An organization must:

1. Meet the statutory definition of a nonprofit organization; *and*
2. Conduct fundraising activities as defined by the statute.

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***ETBS have been made Excise Tax Advisories, and have retained their old number. Advisories with a 2 (plus three digits) are new advisories, ETBs that have been revised and readopted after review under the Department's regulatory improvement program, or advisories that have been revised and/or readopted.***

Please direct comments to:  
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### ***Nonprofit Organization Defined***

To meet the statutory definition of term “nonprofit organization,” an organization must meet one of the following criteria:

- (a) Be exempt from tax under section 501(c) (3), (4), or (10) of the federal internal revenue code (26 U.S.C. Sec. 501(c) (3), (4), or (10));
- (b) Otherwise qualify for exemption from federal tax under (a) above except that it is not organized as a nonprofit corporation; or
- (c) Meet all of the following criteria:
  - (i) The members, stockholders, officers, directors, or trustees of the organization do not receive any part of the organization's gross income, except as payment for services rendered;
  - (ii) The compensation received by any person for services rendered to the organization does not exceed an amount reasonable under the circumstances; and
  - (iii) The activities of the organization do not include a substantial amount of political activity, including but not limited to influencing legislation and participation in any campaign on behalf of any candidate for political office.

### ***Fund-raising Activities***

The term “fund-raising activity” means soliciting or accepting contributions of money or other property, or selling goods or services for cash to further the nonprofit organization’s goals. It does not include the ongoing operation of a regular place of business in which sales are made or services are provided during regular hours such as a bookstore, thrift shop, restaurant or similar business. Fund-raising activities can be disassociated from regular business activities when the fund-raising activity is not done at a regular place of business during regular hours.

### ***The Exemptions***

Organizations meeting both prongs of the test are not subject to business and occupation (B&O) tax on gross income derived from fund-raising activities. In addition, such organizations are exempt from the requirement to collect sales tax when selling retail goods and services as part of a fund-raising event.

Qualifying organizations purchasing goods to resell during a fund-raising event may purchase such goods without sales tax. To make such purchases, the organization must give the seller a properly completed resale certificate. When completing the resale certificate, organizations that are not required to have a UBI/Tax Registration number should indicate that the organization is a qualifying nonprofit organization and will sell the goods during a tax-exempt fund-raising activity.

### **School Districts**

Public school districts are governmental entities which are governed by locally elected legislative boards. As such, public school districts are not eligible for the exemptions provided by RCW 82.04.3651 and 82.08.02573.

### **ASB Groups**

ASBs are established by school districts. However, an ASB is not a public governing body lobbied to make public decisions and is not necessarily involved in a substantial amount of political activity.

To be considered a nonprofit organization, however, an individual ASB must meet the qualifications in the statute and prove that it and the student groups it sponsors are not engaged in a substantial amount of political activity. The easiest way for an ASB to prove it does not engage in a substantial amount of political activity is for the regulating school district to provide that the ASB cannot engage in a substantial amount of political activity. This includes but is not limited to influencing legislative decisions at federal, state or local levels, or participating in any campaign on behalf of any candidate for political office. If the regulating school district does not provide for a limitation of political activities, the ASB must be able to prove that neither the ASB nor ASB-sponsored groups engage in a substantial amount of political activity.

Thus, ASB groups that are not involved in a substantial amount of political activity will qualify for the fund-raising exemptions.

It is important to understand that exemption from the requirement to collect sales tax is limited to those sales the ASB makes in its own name. The exemption does not apply if an ASB group makes sales as an agent for a third party. For example, sales of class jewelry for which the ASB merely collects the money on behalf of the seller continue to be subject to sales tax. The fund-raising exemption does not extend to sales made on behalf of non-qualifying organizations.

### **PTAs**

To the extent a PTA group qualifies as a nonprofit organization, it will qualify for the exemptions providing it conducts fundraising activities as defined by statute.

When considering sales of tangible personal property by the PTA, it is important to distinguish between sales made by the PTA in its own name and those sales whereby the PTA acts as an agent. The fund-raising exemption does not extend to sales made on behalf of non-qualifying organizations.

A common example of a PTA acting as an agent includes book fairs during which the seller consigns books to the PTA. Typically, a PTA will sponsor a book sale during a specific time period. Although the PTA is the sponsor, the seller's name is prominently displayed at the event. The PTA has the option of keeping a book or cash profit based on specified percentages of their total sales. In most

instances, the PTA retains a percentage of the sales proceeds and remits the remaining proceeds to seller. The PTA returns unsold books to the seller. In this and similar situations, sales tax must be collected and remitted on the book sales.

### **Further Questions?**

School-related fund-raising activities vary school to school and group to group. This advisory is intended to provide a general discussion of how the exemptions apply and may not address all school-related fund-raising activities. In such circumstances, the facts should be submitted in writing to:

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