

### Public Works Sales Tax Secrets Revealed

Nettie Van Horn Audit Division – Department of Revenue

Dan Ireland, PE SCJ Alliance / Division 1 Committee Liaison

### LEARNING OBJECTIVES

Objective 1 - Define the difference between Tax Rule 170 and Tax Rule 171.

Objective 2 - Identify limits of Tax Rules with project examples.

**Objective 3** - Prepare construction estimates consistent with Tax Rules 170 and 171.

### Why do we Tax Public Work Projects?

The purpose of taxing public works projects in Washington State, as outlined in Rules 170 and 171, is to ensure compliance with state tax laws while generating revenue for public services. These taxes are applied to construction and repair projects involving public infrastructure and real property. Key purposes include:

- Revenue Generation: Sales and use taxes on materials and services fund state and local government operations, including public infrastructure maintenance and improvement.
- Tax Equity: By requiring contractors to include taxes in their bids or pay taxes on materials used, the rules ensure that all parties involved in public works projects contribute fairly to the tax system.
- Regulatory Compliance: The taxation process ensures that contractors and subcontractors follow state tax laws, such as reporting business and occupation (B&O) taxes, retail sales taxes, and use taxes accurately.
- Transparency in Costs: Including taxes in project bids provides clarity on the total cost of public works projects, allowing agencies to budget effectively and comply with procurement regulations.

# What are the types?

### **Rule 170**

Construction and Repair of buildings or structures on real property.

Typically City and County Transportation Projects = Use Tax

### **Rule 171**

Linear infrastructure projects

Typically WSDOT and Utility components of a project = Retail Tax

# What are the types?

### Rule 170 (WAC 458-20-170)

- Scope: Applies to the construction and repair of buildings or other structures on real property, including state-owned infrastructure such as roads, highways, water mains, and sewers not part of a road drainage system.
- **Tax Handling**: Contractors collect retail sales tax on the total contract price from the contracting agency. The contracting agency adds this tax to payments made to the contractor.
- Exclusions: Sales tax for tools, machinery, equipment, or consumable supplies not integrated into the project is included in the contractor's bid prices and not added separately by the contracting agency\_\_\_\_\_\_

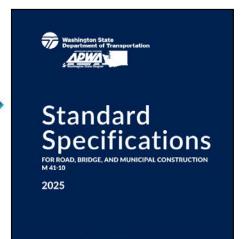
Contractor Payment = Bid Item Unit Cost + Sales Tax



### Rule 171 (WAC 458-20-171)

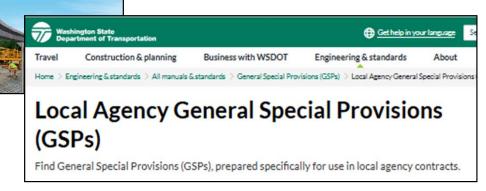
- Scope: Covers public road construction projects such as streets, highways, bridges, tunnels, and related systems owned by municipal corporations or political subdivisions.
- Tax Handling: Contractors include applicable use taxes and retail sales taxes in their bid prices. The retail sales tax is paid on materials and supplies used in the project but not separately added to payments by the contracting agency.
- Purpose: Ensures that taxes are accounted for as part of the contract price for projects involving public infrastructure primarily used for foot or vehicular traffic

Contractor Payment = Bid Item Unit Cost



### Resources

- WSDOT Standard Specifications is the basis of contracting.
- Amend/Supplement with APWA Local Agency GSP's



1-07.2 S State Sales Tax
(June 27, 2011)
May be used on FHWA funded projects.

### Resources

APWA GSP L-07.2 S State Sales Tax

(June 27, 2011)

May be used on FHWA funded projects.

#### 1-07.2 State Taxes

Delete this section, including its sub-sections, in its entirety and replace it with the following:

#### 1-07.2 State Sales Tax

(June 27, 2011 APWA GSP)

The Washington State Department of Revenue has issued special rules on the State sales tax. Sections 1-07.2(1) through 1-07.2(3) are meant to clarify those rules. The Contractor should contact the Washington State Department of Revenue for answers to questions in this area. The Contracting Agency will not adjust its payment if the Contractor bases a bid on a misunderstood tax liability.

The Contractor shall include all Contractor-paid taxes in the unit bid prices or other contract amounts. In some cases, however, state retail sales tax will not be included. Section 1-07.2(2) describes this exception.

The Contracting Agency will pay the retained percentage (or release the Contract Bond if a FHWA-funded Project) only if the Contractor has obtained from the Washington State Department of Revenue a certificate showing that all contract-related taxes have been paid (RCW 60.28.051). The Contracting Agency may deduct from its payments to the Contractor any amount the Contractor may owe the Washington State Department of Revenue, whether the amount owed relates to this contract or not. Any amount so deducted will be paid into the proper State fund.

#### 1-07.2(1) State Sales Tax — Rule 171

WAC 458-20-171, and its related rules, apply to building, repairing, or improving streets, roads, etc., which are owned by a municipal corporation, or political subdivision of the state, or by the United States, and which are used primarily for foot or vehicular traffic. This includes storm or combined sewer systems within and included as a part of the street or road drainage system and power lines when such are part of the roadway lighting system. For work performed in such cases, the Contractor shall include Washington State Retail Sales Taxes in the various unit bid item prices, or other contract amounts, including those that the Contractor pays on the purchase of the materials, equipment, or supplies used or consumed in doing the work.

#### 1-07.2(2) State Sales Tax — Rule 170

WAC 458-20-170, and its related rules, apply to the constructing and repairing of new or existing buildings, or other structures, upon real property. This includes, but is not limited to, the construction of streets, roads, highways, etc., owned by the state of Washington; water mains and their appurtenances; sanitary sewers and sewage disposal systems unless such sewers and disposal systems are within, and a part of, a street or road drainage system; telephone, telegraph, electrical power distribution lines, or other conduits or lines in or above streets or roads, unless such power lines become a part of a street or road lighting system; and installing or attaching of any article of tangible personal property in or to real property, whether or not such personal property becomes a part of the realty by virtue of installation.

For work performed in such cases, the Contractor shall collect from the Contracting Agency, retail sales tax on the full contract price. The Contracting Agency will automatically add this sales tax to each payment to the Contractor. For this reason, the Contractor shall not include the retail sales tax in the unit bid item prices, or in any other contract amount subject to Rule 170, with the following exception.

Exception: The Contracting Agency will not add in sales tax for a payment the Contractor or a subcontractor makes on the purchase or rental of tools, machinery, equipment, or consumable supplies not integrated into the project. Such sales taxes shall be included in the unit bid item prices or in any other contract amount.

#### 1-07.2(3) Services

The Contractor shall not collect retail sales tax from the Contracting Agency on any contract wholly for professional or other services (as defined in Washington State Department of Revenue Rules 138 and 244).

### How Do We Communicate This?

#### WSDOT Plans Preparation Manual

400.06(5) Summary of Quantities

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		NO.				70+85.00	TO	17+18.64	TO	TO	TO	77/10	TO	TO	TO	TO	TO	DAMAGES			
SPECS	SPECS						29+85.00		13+59.65	17+74.53	18+19.15		18+83.05	22+36.98	95+00.00	9+00.00	31+20.00				
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# How Do We Communicate This?

BID ITEM NO.	WSDOT STD ITEM NO.	SPEC. REF.	ITEM DESCRIPTION	UNIT	TOTAL QUANTITY	Schedule A Roadway Tax Rule 171	Schedule B City Utilities Tax Rule 170
			PREPARATION				
1	0001	1-09	MOBILIZATION	L.S.	1.0	1.0	0.0
2	0025	2-01	CLEARING AND GRUBBING	ACRE	1.0	1.0	0.0
3	0187	8-22	REMOVING PAINT LINE	L.F.	1935.0	1935.0	0.0
4	0215	2-02	REMOVING MISCELLANEOUS TRAFFIC ITEM	L.S.	1.0	1.0	0.0
5	NS-102	2-xx	REMOVAL OF WOOD RAIL FENCE	L.F.	210.0	210.0	0.0
			GRADING				
6	0310	2-03	ROADWAY EXCAVATION INCL. HAUL	C.Y.	717.0	717.0	0.0
7	0408	2-03	SELECT BORROW INCL. HAUL	TON	4200.0	4200.0	0.0
			DRAINAGE				1,
8	1054	7-05	GRATE INLET TYPE 2	EACH	1.0	1.0	0.0
9	1163	7-01	UNDERDRAIN PIPE 12 IN. DIAM.	L.F.	220.0	220.0	0.0
			STORM SEWER				,
10	3091	7-05	CATCH BASIN TYPE 1	EACH	11.0	11.0	0.0
11	3541	7-04	SCHEDULE A STORM SEWER PIPE 12 IN. DIAM.	L.F.	40.0	40.0	0.0
12	NS-277	9-03	GRAVEL BACKFILL FOR DRYWELL	C.Y.	120.0	120.0	0.0
			SANITARY SEWER				1.
13	3640	7-19	SEWER CLEANOUT	EACH	11.0	11.0	0.0
			WATER LINES				I.
14	3858	7-15	SERVICE CONNECTION 1 IN. DIAM.	EACH	1.0	0.0	1.0
15	3861	7-15	SERVICE CONNECTION 2 IN. DIAM.	EACH	4.0	0.0	4.0
16	NS-401	7-12	ADJUST METER SERVICE BOX	EACH	4	0.0	4

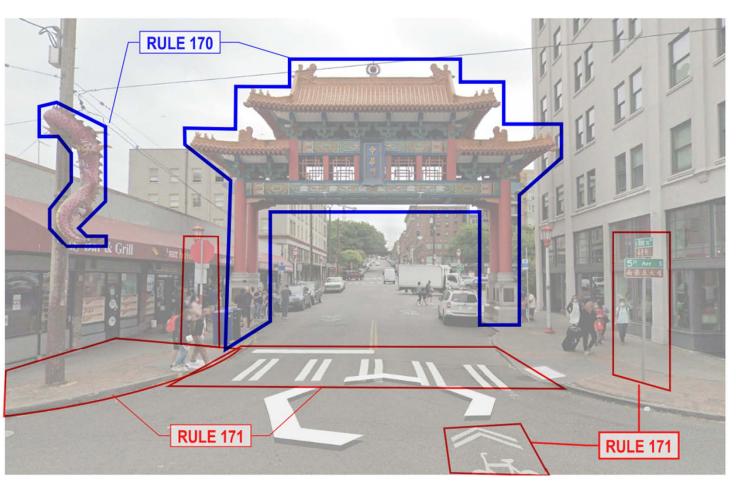
**Project Scenario**: Gateway / Downtown Revitalization City of Seattle Right of Way/Property

- Curb Ramps
- Signing
- Crosswalks
- Bulb outs
- Gateway
  - Signing
- Art



# **Project Scenario**: Gateway / Downtown Revitalization City of Seattle Right of Way/Property

- Curb Ramps
- Signing
- Crosswalks
- Bulb outs
- GatewaySigning
- Art



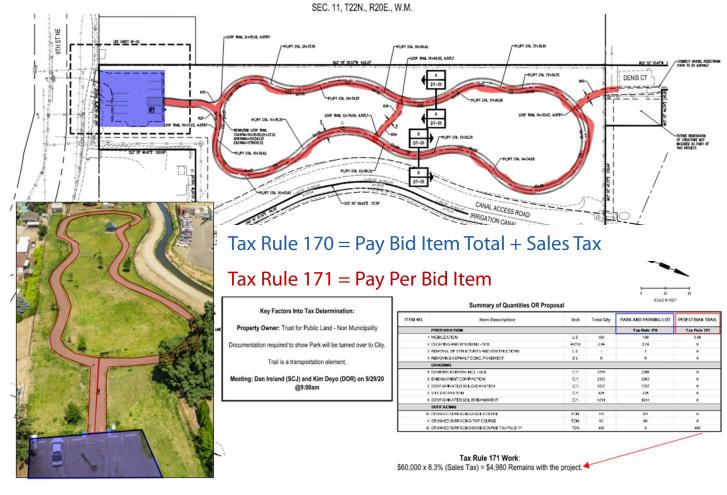
**Project Scenario**: New Public Park
Trust for Public Land to be Transferred to the City

- Trail
- Base Course
- Landscaping
- Parking Lot
- Grading



**Project Scenario**: New Public Park
Trust for Public Land to be Transferred to the City

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- Grading



# **Project Scenario**: New Public Park Trust for Public Land to be Transferred to the City

#### Features:

- Trail
- Base Course
- Landscaping
- Parking Lot
- Grading

	Summary of Quantities OR P	roposal		SCALE IN FEE	:1	
ITEM NO.	Item Description	Unit	Total Qty	PARK AND PARKING LOT	PEDESTRIAN TRA	
	PREPARATION			Taz Rule 170		
	1 MOBILIZATION	L.S.	1.00	1.00	0.00	
	2 CLEARING AND GRUBBING - SITE	ACRE	2.04	2.04	0	
;	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	L.S.	1	1	0	
	4 REMOVING ASPHALT CONC. PAVEMENT	S.Y.	11	11	0	
	GRADING					
	5 COMMON BORROV INCL. HAUL	C.Y.	2255	2255	0	
	6 EMBANKMENT COMPACTION	C.Y.	2363	2363	0	
	7 CONTAMINATED SOIL EXCAVATION	C.Y.	3727	3727	0	
1	8 SITE EXCAVATION	C.Y.	625	625	0	
	9 CONTAMINATED SOIL EMBANKMENT	C.Y.	4244	4244	0	
	SURFACING					
1	0 CRUSHED SURFACING BASE COURSE	TON	170	170	0	
1	CRUSHED SURFACING TOP COURSE	TON	60	60	0	
1.	2 CRUSHED SURFACING BASE COURSE TAX RULE 171	TON	400	0	400	

#### Tax Rule 171 Work:

\$60,000 x 8.3% (Sales Tax) = \$4,980 Remains with the project.

Project Scenario: New Sidewalk with <u>Utilities Upgrades</u> Property: City

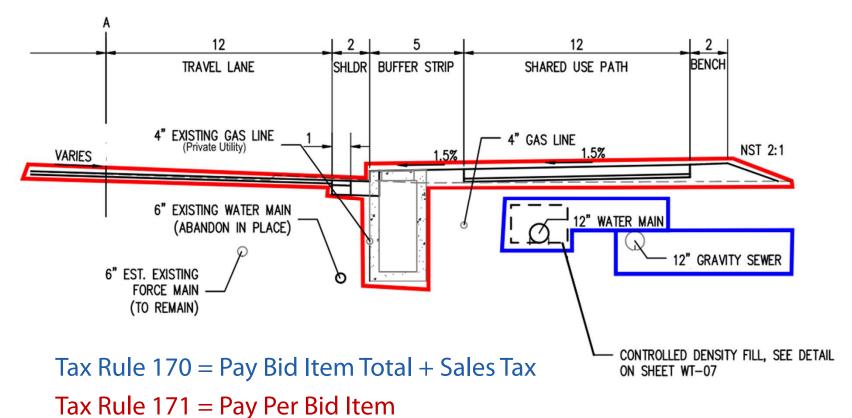
#### Features:

Sidewalk

Base Course

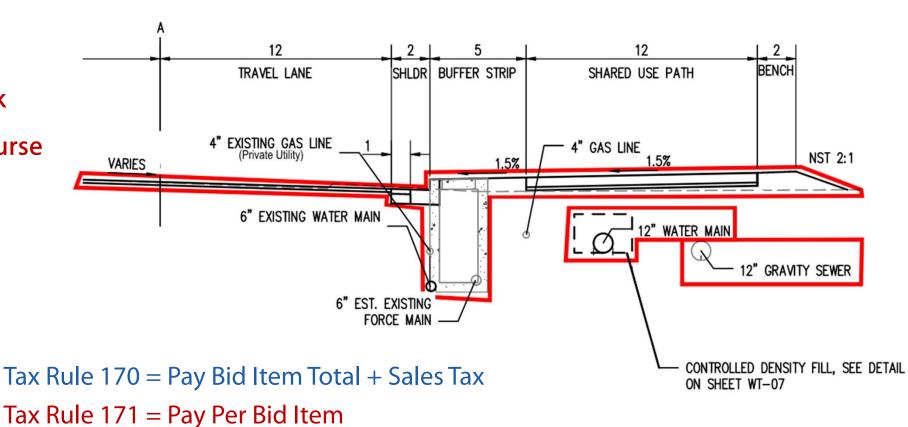
Water

Sewer



Project Scenario: New Sidewalk with <u>Impacted Utilities</u> Property: City

- Sidewalk
- Base Course
- Water
- Sewer

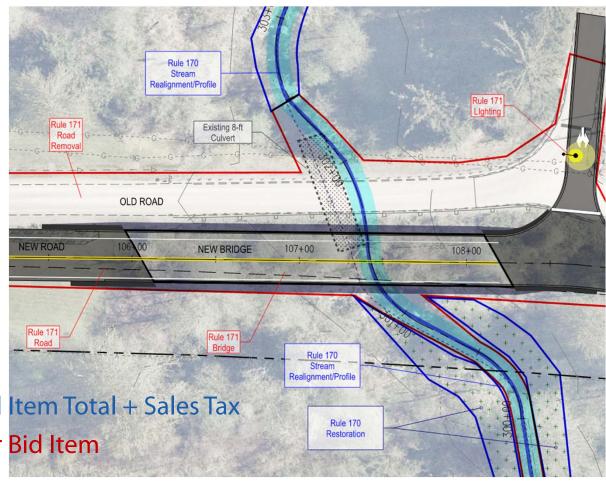


### **Project Scenario**: Fish Culvert Replacement **County Property**

#### Features:

- Bridge
- Road
- Stream
- Restoration
- Lighting

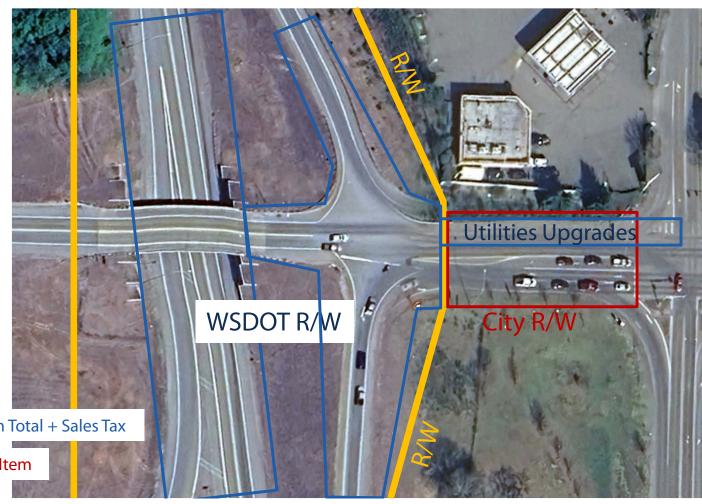
Tax Rule 170 = Pay Bid Item Total + Sales Tax Tax Rule 171 = Pay Per Bid Item



# **Project Scenario**: Interchange WSDOT/County Property

### Features:

- Bridge
- RampWidening
- Restoration
- Lighting



Tax Rule 170 = Pay Bid Item Total + Sales Tax

Tax Rule 171 = Pay Per Bid Item

### **Best Practices**

- 1. Separate your project estimates/quantities First Thing!
  - 1. Groups/Schedules per Tax situation "aka Control Section"
- 2. Contact DOR and do a "coloring exercise"
- 3. Communicate to your Bidders / Construction Inspection / Finance
  - 1. Summary of Quantities WSDOT Plans Preparation Manual 400.06(5)
  - 2. OR Separate Bid Schedules

### **NOC Process at DOR**



- Notice of Completion submitted in MyDOR
- NOC is reviewed and input in system
- Examiner requests reconciliation from contractor
- Examiner reviews reconciliation
  - Examiner compares information on reconciliation with amounts reported on returns
  - If additional taxes are owed, the examiner will issue an invoice to the contractor
- When all taxes have been paid, a release letter is sent







Date:	CE OF COMPI	Co	OF PUBLIC W			ACT
Name & Mailing			ntractor's UBI N			
	Address of Public Ag	onev		umber:		
UBI Number:		ency		Depa	artment Use	Only
UBI Number:			Assigned to:			
UBI Number:			Date Assigned	4.0		
			Date Assigned	u. —		
Notice	is hereby given relati	ve to the com	pletion of contrac	t or projec	t described b	elow
Project Name			Contr	act Number	er	Job Order Contracting
Description of Work Done/	Indude Tehelte Addres	m(-a)				Yes No
Federally funded transport Contractor's Name	ation project?	E-mail A			Contract Bon Affidavit ID	d Statement below)
Contractor Address				Te	lephone#	
If Retainage is not withheld Retainage Bond	, please select one of th					
Name:		☐ Cont	Bond Nu		ederally funded	ransportation projects)
Name: Date Contract Awarded   [1	Date Work Commence	d I	Date Work Comple		Date Work A	ccepted
Were Subcontracters used					Yes I	ło
Affidavit ID* - No L&1 relea	se will be granted until all	affidavits are lis	sted.			
Contract Amount	\$					
Additions (+)	\$		L	iquidated	Damages \$	
Reductions (-)	S			Amount I	Disbursed \$	
Sub-Total	s	0.00		Amount	Retained \$	
Sales Tax Rate	%				-	-
(If various rates apply, please send a	breakdown)					
Sales Tax Amount	s_		_		mom ix a	0.00
	TOTAL \$	0.00			TOTAL \$_	0.00
Comments:	NOI	E: These tw	o totals must be eq	ual		





### Notice of Completion (NOC) ctd.

#### **Common Questions we contact you about:**

#### Job Site Address

This helps us determine accurate sales/use tax rates.
 See Tax Rate Lookup tool @ dor.wa.gov

#### Multiple Sales Tax Rates

- Show breakdown of Sales taxable vs not sales taxable.
- Show breakdown of various sales tax rates and taxable value for each.

#### **Description of Work**

Give us enough information to approve the tax choices you made.







# **Primary Contractor**

- Responsible for filing reconciliation in MyDOR
  - The reconciliation details periods where contract was billed
  - Contractor indicates periods where taxes were remitted on Combined Excise Tax Returns
- Why is the reconciliation required?
  - Combined Excise Tax Returns include gross income and taxes owed for all projects
  - The reconciliation is specific to the contract





### **Rules and Laws**

#### **WAC**

- 458-20-170 Construction/Repair Buildings
- 458-20-171 Public Road Construction
- 458-20-17001 Govt Contracting/ Fed Govt and Housing Authorities
- <u>458-20-178</u> Use Tax
- 458-20-217 Lien on Taxes

#### **RCW**

• <u>60.28</u> – Lien for Labor, Materials, & Taxes on Public Works





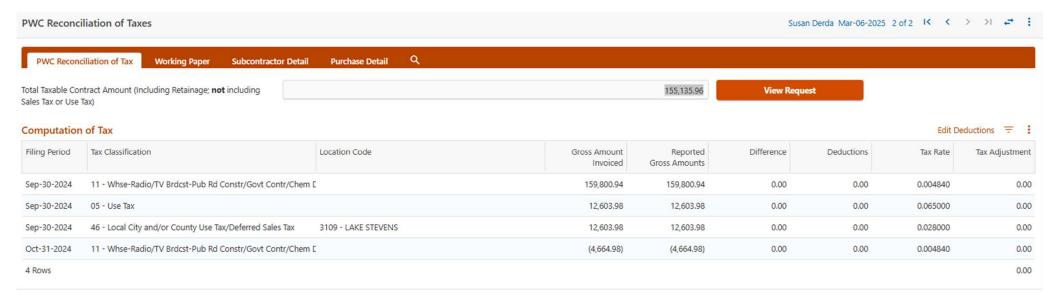
# Reconciliation Example

PWC Recon	ciliation of Tax Working Paper Subcontractor Detail	Purchase Detail Q						
ital Taxable Co iles Tax or Use	ntract Amount (including Retainage; <b>not</b> including Tax)			1,327,772.94				
omputation	n of Tax						Edit De	eductions =
Filing Period	Tax Classification	Location Code	Gross Amount Invoiced	Reported Gross Amounts	Difference	Deductions	Tax Rate	Tax Adjustme
Apr-30-2021	01 - Retail Sales		124,031.13	124,031.13	0.00	0.00	0.065000	0.
pr-30-2021	02 - Retailing		124,031.13	124,031.13	0.00	0.00	0.004710	0.
Apr-30-2021	45 - Local City and/or County Sales Tax	3109 - LAKE STEVENS	124,031.13	124,031.13	0.00	0.00	0.025000	0.
May-31-2021	01 - Retail Sales		262,145.12	262,145.12	0.00	0.00	0.065000	0.
May-31-2021	02 - Retailing		262,145.12	262,145.12	0.00	0.00	0.004710	0
lay-31-2021	45 - Local City and/or County Sales Tax	3109 - LAKE STEVENS	262,145.12	262,145.12	0.00	0.00	0.025000	C
un-30-2021	01 - Retail Sales		245,588.97	245,588.97	0.00	0.00	0.065000	0
un-30-2021	02 - Retailing		245,588.97	245,588.97	0.00	0.00	0.004710	0
un-30-2021	45 - Local City and/or County Sales Tax	3109 - LAKE STEVENS	245,588.97	245,588.97	0.00	0.00	0.025000	0
ul-31-2021	01 - Retail Sales		146,001.59	146,001.59	0.00	0.00	0.065000	0
ul-31-2021	02 - Retailing		146,001.56	146,001.56	0.00	0.00	0.004710	0.
ul-31-2021	45 - Local City and/or County Sales Tax	3109 - LAKE STEVENS	146,001.56	146,001.56	0.00	0.00	0.025000	0.
ug-31-2021	01 - Retail Sales		141,996.19	141,996.19	0.00	0.00	0.065000	0.
ug-31-2021	02 - Retailing		141,996.19	141,996.19	0.00	0.00	0.004710	0.
ug-31-2021	45 - Local City and/or County Sales Tax	3109 - LAKE STEVENS	141,996.19	141,996.19	0.00	0.00	0.025000	0.
eb-28-2021	01 - Retail Sales		137,705.85	137,705.85	0.00	0.00	0.065000	0.
eb-28-2021	02 - Retailing		137,705.85	137,705.85	0.00	0.00	0.004710	0
eb-28-2021	45 - Local City and/or County Sales Tax	3109 - LAKE STEVENS	137,705.85	137,705.85	0.00	0.00	0.025000	0
lov-30-2021	01 - Retail Sales		270 304.12	272 002.69	(1 698.57)	0.00	0.065000	(110.4





### **Public Road Construction Reconciliation**





### **Common Delays**

- Failure to file a reconciliation
- Unable to pay taxes owed
- Final payment on project questions
- Disagreement of project dollar amounts
- Contractor goes out of business



### **Other Reference Materials**

- DOR Internet dor.wa.gov
  - GIS Sales Tax rates and Local codes
  - Construction Guide
    - https://dor.wa.gov/doing-business/business-types/industry-guides/construction
  - Public Works Information
    - https://dor.wa.gov/doing-business/public-works-contract-clearance
    - https://dor.wa.gov/doing-business/business-types/industry-guides/construction/publicroad-construction
- Notices
  - ETA 3024 Public Works Contracts
  - ETA 3068 Highway Projects for WSDOT
- Tax Research Index Index of WTD/ETA/etc by WAC
- Taxpedia Search Engine for Law & Rules





### **Letter Rulings and Contact Information**

#### **Letter Ruling**

- Available through DOR's Online Service My Account
- Tax Rulings Webpage https://dor.wa.gov/contact-us/binding-rulings

#### **Contact Us:**

- Nettie VanHorn, Excise Tax Examiner 3
- Phone Number: (360) 704-5650
- Email: <u>PWC@dor.wa.gov</u>





# Questions or Comments? Tell us your scenario

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