



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Revenue

- Preproposal Statement of Inquiry was filed as WSR 10-02-084; or
- Expedited Rule Making--Proposed notice was filed as WSR ; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information: WAC 458-20-102 *Reseller permits* and WAC 458-20-102A *Resale certificates*

Hearing location(s):

Capitol Plaza Building
4th Floor RLA Lg Conference Rm
1025 Union Avenue SE
Olympia, Washington 98504

Copies of draft rules are available for viewing and printing on our website at [Rules Agenda](#)

Date: April 26, 2011 **Time:** 1:30 PM

Date of intended adoption: May 6, 2011
(Note: This is NOT the effective date)

Submit written comments to:

Name: Gayle Carlson
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By: April 26, 2011

Assistance for persons with disabilities: Contact Mary Carol LaPalm (360) 725-7499 or Renee Cosare (360) 725-7514 no later than 10 days before the hearing date. For Hearing impaired please contact us via the Washington Relay Operator at (800) 833-6384.

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Currently WAC 458-20-102 (Rule 102) explains the resale certificate and conditions under which a buyer may furnish a resale certificate to a seller. Effective January 1, 2010, reseller permits replaced resale certificates as the means to substantiate wholesale purchases. Chapter 563, Laws of 2009.

The Department of Revenue (Department) is proposing an amendment to Rule 102 to explain the reseller permit and conditions under which a buyer may furnish a reseller permit to a seller. The Department incorporated the information contained in the existing Rule 102 into a new Rule 102A. Rule 102A retains the information necessary for resale certificates that were used prior to January 1, 2010. The information incorporated into Rule 102A is necessary until the statute of limitation period for assessments and non claim period for refunds has run.

Reasons supporting proposal: WAC 458-20-102 *Reseller permits* is needed to explain that resale certificates can no longer be used after January 1, 2010, and that reseller permits, issued by the Department, are used to substantiate wholesale sales made on or after January 1, 2010.

Statutory authority for adoption:
RCW 82.32.300 and 82.01.060(2)

Statute being implemented:
RCW 82.32.780 and 82.32.783

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

Date March 21, 2011

Name Alan R. Lynn

Signature

Title Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 21, 2011

TIME: 9:22 AM

WSR 11-07-061

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None.

Name of proponent:

Department of Revenue

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Gayle Carlson	1025 Union Ave. SE. Ste #544, Olympia ,Wa	(360)534-1576
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Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

Phone:

E-mail:

No. Explain why no statement was prepared.

The rules do not impose any new performance requirements or administrative burden on any small business not required by statute.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone:

E-mail:

No: Please explain:

The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

THIS PROPOSED RULE IS SUBMITTED FOR PUBLIC COMMENTS AFTER INPUT FROM INTERESTED PARTIES AND IS TO BE USED SOLELY FOR DISCUSSION PURPOSES AT THE PUBLIC HEARING ON THE PROPOSED RULE. UNDER NO CIRCUMSTANCES IS THIS PROPOSED RULE TO BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS.

AMENDATORY SECTION (Amending WSR 08-21-103, filed 10/16/08, effective 11/16/08)

WAC 458-20-102 ((Resale certificates.)) Reseller permits.

~~((1) **Introduction.** This section explains the conditions under which a buyer may furnish a resale certificate to a seller, and explains the information and language required on the resale certificate. This section also provides tax reporting information to persons who purchase articles or services for dual purposes (i.e., for both resale and consumption).~~

~~(a) **Legislation passed in 2003.** In 2003, the legislature enacted legislation conforming state law to portions of the national Streamlined Sales and Use Tax Agreement (chapter 168, Laws of 2003), which eliminates the good faith requirement when the seller takes from the buyer a resale certificate and also eliminates signature requirements for certificates provided in a format other than paper. These changes apply to resale certificates taken on and after July 1, 2004.~~

~~(b) **Legislation passed in 2007.** Additional Streamlined Sales and Use Tax Agreement legislation was enacted in 2007 (chapter 6, Laws of 2007). It eliminates the provision that resale certificates are only valid for four years from the date they are issued to the seller, as long as there is a recurring business relationship between the buyer and seller. This change is effective on July 1, 2008.~~

~~(2) **What is a resale certificate?** The resale certificate is a document or combination of documents that substantiates the wholesale nature of a sale. The resale certificate cannot be used for purchases that are not purchases at wholesale, or where a more specific certificate, affidavit, or other documentary evidence is required by statute or other section of chapter 458-20 WAC. While the resale certificate may come in different forms, all resale certificates must satisfy the language and information requirements of RCW 82.04.470.~~

~~(a) **What is the scope of a resale certificate?** Depending on the statements made on the resale certificate, the resale certificate may authorize the buyer to purchase at wholesale all products or services being purchased from a particular seller, or may authorize only selected products or services to be purchased at wholesale. The provisions of the resale certificate may be limited to a single sales transaction, or may apply to all sales transactions as long as the seller has a recurring business relationship with the buyer. A "recurring~~

~~business relationship" means at least one sale transaction within a period of twelve consecutive months. Whatever its form and/or purpose, the resale certificate must be completed in its entirety and signed by a person who is authorized to make such a representation on behalf of the buyer.~~

~~(b) **Who may issue and sign certificates?** The buyer may authorize any person in its employ to issue and sign resale certificates on the buyer's behalf. The buyer is, however, responsible for the information contained on the resale certificate. A resale certificate is not required to be completed by every person ordering or making the actual purchase of articles or services on behalf of the buyer. For example, a construction company that authorizes only its bookkeeper to issue resale certificates on its behalf may authorize both the bookkeeper and a job foreman to purchase items under the provisions of the resale certificate. The construction company is not required to provide, nor is the seller required to obtain, a resale certificate signed by each person making purchases on behalf of the construction company.~~

~~The buyer is responsible for educating all persons authorized to issue and/or use the resale certificate on the proper use of the buyer's resale certificate privileges.~~

~~(3) **Resale certificate renewal.** Prior to July 1, 2008, resale certificates must be renewed at least every four years. As of July 1, 2008, the requirement to renew resale certificates at least every four years has been eliminated. The buyer must renew its resale certificate whenever a change in the ownership of the buyer's business requires a new tax registration. (See WAC 458 20 101 Tax registration and tax reporting.) The buyer may not make purchases under the authority of a resale certificate bearing a tax registration number that has been cancelled or revoked by the department of revenue (department).~~

~~(4) **Sales at wholesale.** All sales are treated as retail sales unless the seller takes from the buyer a properly executed resale certificate. Resale certificates may only be used for sales at wholesale and may not be used as proof of entitlement to retail sales tax exemptions otherwise provided by law.~~

~~(a) **When may a buyer issue a resale certificate?** The buyer may issue a resale certificate only when the property or services purchased are:~~

~~(i) For resale in the regular course of the buyer's business without intervening use by the buyer;~~

~~(ii) To be used as an ingredient or component part of a new article of tangible personal property to be produced for sale;~~

~~(iii) A chemical to be used in processing an article to be produced for sale (see WAC 458 20 113 on chemicals used in processing);~~

~~(iv) To be used in processing ferrosilicon that is subsequently used in producing magnesium for sale;~~

~~(v) Provided to consumers as a part of competitive telephone service, as defined in RCW 82.04.065;~~

~~(vi) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use in the federal conservation reserve program or its successor administered by the United States Department of Agriculture; or~~

~~(vii) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use by a farmer for producing for sale any agricultural product. (See WAC 458-20-210 on sales to and by farmers.)~~

~~(b) **Required information.** All resale certificates, whether paper or nonpaper format, must contain the following information:~~

~~(i) The name and address of the buyer;~~

~~(ii) The uniform business identifier or tax registration number of the buyer, if the buyer is required to be registered with the department;~~

~~(iii) The type of business;~~

~~(iv) The categories of items or services to be purchased at wholesale, unless the buyer is in a business classification that may present a blanket resale certificate as provided by the department by rule;~~

~~(v) The date on which the certificate was provided;~~

~~(vi) A statement that the items or services purchased either are purchased for resale in the regular course of business or are otherwise purchased at wholesale; and~~

~~(vii) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the certificate and that misuse of the resale certificate subjects the buyer to a penalty of fifty percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law.~~

~~(c) **Additional requirements for paper certificates.** In addition to the requirements stated in (b) of this subsection, paper certificates must contain the following:~~

~~(i) The name of the individual authorized to sign the certificate, printed in a legible fashion;~~

~~(ii) The signature of the authorized individual; and~~

~~(iii) The name of the seller. RCW 82.04.470.~~

~~(5) **Seller's responsibilities.** When a seller receives and accepts from the buyer a resale certificate at the time of the sale, or has a resale certificate on file at the time of the sale, or obtains a resale certificate from the buyer within one hundred twenty days after the sale, the seller is relieved of liability for retail sales tax with respect to the sale covered by the resale certificate. The seller may accept a legible fax, a duplicate copy of an original resale certificate, or a certificate in a format other than paper.~~

~~(a) If the seller has not obtained an appropriate resale certificate or other acceptable documentary evidence (see subsection (8) of this section), the seller is personally liable for the tax due unless it can sustain the burden of proving through facts and circumstances that the property was sold for one of the purposes set forth in subsection (4)(a) of this section. The department will consider all evidence presented by the seller, including the circumstances of the sales transaction itself, when determining whether the seller has met its burden of proof. It is the seller's responsibility to provide the information necessary to evaluate the facts and circumstances of all sales transactions for which resale certificates are not obtained. Facts and circumstances that should be considered include, but are not necessarily limited to, the following:~~

~~(i) The nature of the buyer's business. The items being purchased at wholesale must be consistent with the buyer's business. For example, a buyer having a business name of "Ace Used Cars" would generally not be expected to be in the business of selling furniture;~~

~~(ii) The nature of the items sold. The items sold must be of a type that would normally be purchased at wholesale by the buyer; and~~

~~(iii) Additional documentation. Other available documents, such as purchase orders and shipping instructions, should be considered in determining whether they support a finding that the sales are sales at wholesale.~~

~~(b) If the seller is required to make payment to the department, and later is able to present the department with proper documentation or prove by facts and circumstances that the sales in question are wholesale sales, the seller may in writing request a refund of the taxes paid along with the applicable interest. Both the request and the documentation or proof that the sales in question are wholesale sales must be submitted to the department within the statutory time limitations provided by RCW 82.32.060. (See WAC 458-20-229 Refunds.) However, refer to (f) of this subsection in event of an audit situation.~~

~~(c) **Timing requirements for single orders with multiple billings.** If a single order or contract will result in multiple billings to the buyer, and the appropriate resale certificate was not obtained or on file at the time the order was placed or the contract entered, the resale certificate must be received by the seller within one hundred twenty days after the first billing. For example, a subcontractor entering into a construction contract for which it has not received a resale certificate must obtain the certificate within one hundred twenty days of the initial construction draw request, even though the construction project may not be completed at that time and additional draw requests will follow.~~

~~(d) Requirements for resale certificates obtained after one hundred twenty days have passed.~~ If the resale certificate is obtained more than one hundred twenty days after the sale or sales in question, the resale certificate must be specific to the sale or sales. The certificate must specifically identify the sales in question on its face, or be accompanied by other documentation signed by the buyer specifically identifying the sales in question and stating that the provisions of the accompanying resale certificate apply. A nonspecific resale certificate that is not obtained within one hundred twenty days is generally not, in and of itself, acceptable proof of the wholesale nature of the sales in question. The resale certificate and/or required documentation must be obtained within the statutory time limitations provided by RCW 82.32.050.

~~(e) Examples.~~ The following examples explain the seller's documentary requirements in typical situations when obtaining a resale certificate more than one hundred twenty days after the sale. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

~~(i) Beginning in January of year 1, MN Company regularly makes sales to ABC Inc. In June of the same year, MN discovers ABC has not provided a resale certificate. MN requests a resale certificate from ABC and, as the resale certificate will not be received within one hundred twenty days of many of the past sales transactions, requests that the resale certificate specifically identify those past sales subject to the provisions of the certificate. MN receives a legible fax copy of an original resale certificate from ABC on July 1st of that year. Accompanying the resale certificate is a memo providing a list of the invoice numbers for all past sales transactions through May 15th of that year. This memo also states that the provisions of the resale certificate apply to all past and future sales, including those listed. MN Company has satisfied the requirement that it obtain a resale certificate specific to the sales in question.~~

~~(ii) XYZ Company makes three sales to MP Inc. in October of year 1 and does not charge retail sales tax. In the review of its resale certificate file in April of the following year, XYZ discovers it has not received a resale certificate from MP Inc. and immediately requests a certificate. As the resale certificate will not be received within one hundred twenty days of the sales in question, XYZ requests that MP provide a resale certificate identifying the sales in question. MP provides XYZ with a resale certificate that does not identify the sales in question, but simply states "applies to all past purchases." XYZ Company has not satisfied its responsibility to obtain an appropriate resale certificate. As XYZ failed to secure a resale certificate within a reasonable period of time, XYZ must~~

~~obtain a certificate specifically identifying the sales in question or prove through other facts and circumstances that these sales are wholesale sales. (Refer to (a) of this subsection for information on how a seller can prove through other facts and circumstances that a sale is a wholesale sale.) It remains the seller's burden to prove the wholesale nature of the sales made to a buyer if the seller has not obtained a valid resale certificate within one hundred twenty days of the sale.~~

~~(f) **Additional time to secure documentation in audit situation.** If in event of an audit the department discovers that the seller has not secured, as described in this subsection (5), the necessary resale certificates and/or documentation, the seller will generally be allowed one hundred twenty days in which to obtain and present appropriate resale certificates and/or documentation, or prove by facts and circumstances the sales in question are wholesale sales. The time allotted to the seller shall commence from the date the auditor initially provides the seller with the results of the auditor's wholesale sales review. The processing of the audit report will not be delayed as a result of the seller's failure within the allotted time to secure and present appropriate documentation, or its inability to prove by facts and circumstances that the sales in question were wholesale sales.~~

~~(6) **Penalty for improper use.** Any buyer who uses a resale certificate to purchase items or services without payment of sales tax and who is not entitled to use the certificate for the purchase will be assessed a penalty of fifty percent of the tax due on the improperly purchased item or service. This penalty is in addition to all other taxes, penalties, and interest due, and can be imposed even if there was no intent to evade the payment of retail sales tax. The penalty will be assessed by the department and applies only to the buyer. However, see subsection (12) of this section for situations in which the department may waive the penalty.~~

~~Persons who purchase articles or services for dual purposes (i.e., some for their own consumption and some for resale) should refer to subsection (11) of this section to determine whether they may give a resale certificate to the seller.~~

~~(7) **Resale certificate - suggested form.** While there may be different forms of the resale certificate, all resale certificates must satisfy the language and information requirements provided by RCW 82.04.470. The resale certificate is available on the department's internet site at <http://dor.wa.gov>, or can be obtained by calling the department's telephone information center at 1-800-647-7706 or by writing:~~

~~Taxpayer Services
Department of Revenue~~

~~P.O. Box 47478
Olympia, WA 98504 7478~~

~~A resale certificate may be in any other form that contains substantially the same information and language, except that certificates provided in a format other than paper are not required to include the printed name of the person authorized to sign the certificate, the signature of the authorized individual, or the name of the seller.~~

~~Effective July 1, 2008, buyers also have the option of using a Streamlined Sales and Use Tax Agreement Certificate of Exemption, which has been modified for Washington state laws. It can also be found on the department's internet site at <http://dor.wa.gov>.~~

~~(a) **Buyer's responsibility to specify products or services purchased at wholesale.** RCW 82.04.470 requires the buyer making purchases at wholesale to specify the kinds of products or services subject to the provisions of the resale certificate. A buyer who will purchase some of the items at wholesale, and consume and pay tax on some other items being purchased from the same seller, must use terms specific enough to clearly indicate to the seller what kinds of products or services the buyer is authorized to purchase at wholesale.~~

~~(i) The buyer may list the particular products or services to be purchased at wholesale, or provide general category descriptions of these products or services. The terms used to describe these categories must be descriptive enough to restrict the application of the resale certificate provisions to those products or services that the buyer is authorized to purchase at wholesale. The following are examples of terms used to describe categories of products purchased at wholesale, and businesses that may be eligible to use such terms on their resale certificates:~~

~~(A) "Hardware" for use by a general merchandise or building material supply store, "computer hardware" for use by a computer retailer;~~

~~(B) "Paint" or "painting supplies" for use by a general merchandise or paint retailer, "automotive paint" for use by an automotive repair shop; and~~

~~(C) "Building materials" or "subcontract work" for use by prime contractors performing residential home construction, "wiring" or "lighting fixtures" for use by an electrical contractor.~~

~~(ii) The buyer must remit retail sales tax on any taxable product or service not listed on the resale certificate provided to the seller. If the buyer gave a resale certificate to the seller and later used an item listed on the certificate, or if the seller failed to collect the sales tax on items not listed on the certificate, the buyer must remit the deferred sales or~~

~~use tax due directly to the department.~~

~~(iii) RCW 82.08.050 provides that each seller shall collect from the buyer the full amount of retail sales tax due on each retail sale. If the department finds that the seller has engaged in a consistent pattern of failing to properly charge sales tax on items not purchased at wholesale (i.e., not listed on the resale certificate), it may hold the seller liable for the uncollected sales tax.~~

~~(iv) Persons having specific questions regarding the use of terms to describe products or services purchased at wholesale may submit their questions to the department for ruling. The department may be contacted on the internet at <http://dor.wa.gov/> or by writing:~~

~~Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504 7478~~

~~(b) **Blanket resale certificates.** A buyer who will purchase at wholesale all of the products or services being purchased from a particular seller will not be required to specifically describe the items or item categories on the resale certificate. If the certificate form provides for a description of the products or services being purchased at wholesale the buyer may specify "all products and/or services" (or make a similar designation). A resale certificate completed in this manner is often described as a blanket resale certificate.~~

~~(i) The resale certificate used by the buyer must, in all cases, be completed in its entirety. A resale certificate in which the section for the description of the items being purchased at wholesale is left blank by the buyer will not be considered a properly executed resale certificate.~~

~~(ii) As of July 1, 2008, renewal or updating of blanket resale certificates is not required as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.~~

~~To effectively administer this provision during an audit, the department will accept a resale certificate as evidence for wholesale sales that occur within four years of the certificate's effective date without evidence of sales transactions being made once every twelve months. For sales transactions made more than four years after the date of the properly completed resale certificate, the seller must substantiate that a recurring business relationship with the buyer has occurred for any sales outside the period of more than four years after the effective date of the resale certificate.~~

~~(c) **Resale certificates for single transactions.** If the~~

~~resale certificate is used for a single transaction, the language and information required of a resale certificate may be written or stamped upon a purchase order or invoice. The language contained in a "single use" resale certificate should be modified to delete any reference to subsequent orders or purchases.~~

~~(d) **Examples.** The following examples explain the proper use of types of resale certificates in typical situations. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.~~

~~(i) ABC is an automobile repair shop purchasing automobile parts for resale and tools for its own use from DE Supply. ABC must provide DE Supply with a resale certificate limiting the certificate's application to automobile part purchases. However, should ABC withdraw parts from inventory to install in its own tow truck, deferred retail sales tax or use tax must be remitted directly to the department. The buyer has the responsibility to report deferred retail sales tax or use tax upon any item put to its own use, including items for which it gave a resale certificate and later used for its own use.~~

~~(ii) X Company is a retailer selling lumber, hardware, tools, automotive parts, and household appliances. X Company regularly purchases lumber, hardware, and tools from Z Distributing. While these products are generally purchased for resale, X Company occasionally withdraws some of these products from inventory for its own use. X Company may provide Z Distributing with a resale certificate specifying "all products purchased" are purchased at wholesale. However, whenever X Company removes any product from inventory to put to its own use, deferred retail sales tax or use tax must be remitted to the department.~~

~~(iii) TM Company is a manufacturer of electric motors. When making purchases from its suppliers, TM issues a paper purchase order. This purchase order contains the information required of a resale certificate and a signature of the person ordering the items on behalf of TM. This purchase order includes a box that, if marked, indicates to the supplier that all or certain designated items purchased are being purchased at wholesale.~~

~~When the box indicating the purchases are being made at wholesale is marked, the purchase order can be accepted as a resale certificate. As TM Company's purchase orders are being accepted as resale certificates, they must be retained by the seller for at least five years. (See WAC 458-20-254 Recordkeeping.)~~

~~(8) **Other documentary evidence.** Other documentary evidence may be used by the seller and buyer in lieu of the resale certificate form described in this section. However, this~~

~~documentary evidence must collectively contain the information and language generally required of a resale certificate. The conditions and restrictions applicable to the use of resale certificates apply equally to other documentary evidence used in lieu of the resale certificate form in this section. The following are examples of documentary evidence that will be accepted to show that sales were at wholesale:~~

~~(a) **Combination of documentary evidence.** A combination of documentation kept on file, such as a membership card or application, and a sales invoice or "certificate" taken at the point of sale with the purchases listed, provided:~~

~~(i) The documentation kept on file contains all information required on a resale certificate, including, for paper certificates, the names and signatures of all persons authorized to make purchases at wholesale; and~~

~~(ii) The sales invoice or "certificate" taken at the point of sale must contain the following:~~

~~(A) Language certifying the purchase is made at wholesale, with acknowledgement of the penalties for the misuse of resale certificate privileges, as generally required of a resale certificate; and~~

~~(B) The name and registration number of the buyer/business, and, if a paper certificate, an authorized signature.~~

~~(b) **Contracts of sale.** A contract of sale that within the body of the contract provides the language and information generally required of a resale certificate. The contract of sale must specify the products or services subject to the resale certificate privileges.~~

~~(c) **Other preapproved documentary evidence.** Any other documentary evidence that has been approved in advance and in writing by the department.~~

~~(9) **Sales to nonresident buyers.** If the buyer is a nonresident who is not engaged in business in this state, but buys articles here for the purpose of resale in the regular course of business outside this state, the seller must take from the buyer a resale certificate as described in this section. The seller may accept a resale certificate from an unregistered nonresident buyer with the registration number information omitted, provided the balance of the resale certificate is completed in its entirety. The resale certificate should contain a statement that the items are being purchased for resale outside Washington.~~

~~(10) **Sales to farmers.** Farmers selling agricultural products only at wholesale are not required to register with the department. (See WAC 458-20-101 Tax registration and tax reporting.) When making wholesale sales to farmers (including farmers operating in other states), the seller must take from the farmer a resale certificate as described in this section. Farmers not required to be registered with the department may~~

provide, and the seller may accept, resale certificates with the registration number information omitted, provided the balance of the certificates are completed in full. Persons making sales to farmers should also refer to WAC 458-20-210 (Sales of tangible personal property for farming Sales of agricultural products by farmers).

~~(11) **Purchases for dual purposes.**— A buyer normally engaged in both consuming and reselling certain types of tangible personal property, and not able to determine at the time of purchase whether the particular property purchased will be consumed or resold, must purchase according to the general nature of his or her business. RCW 82.08.130. If the buyer principally consumes the articles in question, the buyer should not give a resale certificate for any part of the purchase. If the buyer principally resells the articles, the buyer may issue a resale certificate for the entire purchase. For the purposes of this subsection, the term "principally" means greater than fifty percent.~~

~~(a) **Deferred sales tax liability.**— If the buyer gives a resale certificate for all purchases and thereafter consumes some of the articles purchased, the buyer must set up in his or her books of account the value of the article used and remit to the department the applicable deferred sales tax. The deferred sales tax liability should be reported under the use tax classification on the buyer's excise tax return.~~

~~(i) Buyers making purchases for dual purposes under the provisions of a resale certificate must remit deferred sales tax on all products or services they consume. If the buyer fails to make a good faith effort to remit this tax liability, the penalty for the misuse of resale certificate privileges may be assessed. This penalty will apply to the unremitted portion of the deferred sales tax liability.~~

~~A buyer will generally be considered to be making a good faith effort to report its deferred sales tax liability if the buyer discovers a minimum of eighty percent of the tax liability within one hundred twenty days of purchase, and remits the full amount of the discovered tax liability upon the next excise tax return. However, if the buyer does not satisfy this eighty percent threshold and can show by other facts and circumstances that it made a good faith effort to report the tax liability, the penalty will not be assessed. Likewise, if the department can show by other facts and circumstances that the buyer did not make a good faith effort in remitting its tax liability the penalty will be assessed, even if the eighty percent threshold is satisfied.~~

~~(ii) The following example illustrates the use of a resale certificate for dual-use purchases. This example should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and~~

~~circumstances. BC Contracting operates both as a prime contractor and speculative builder of residential homes. BC Contracting purchases building materials from Seller D that are principally incorporated into projects upon which BC acts as a prime contractor. BC provides Seller D with a resale certificate and purchases all building materials at wholesale. BC must remit deferred sales tax upon all building materials incorporated into the speculative projects to be considered to be properly using its resale certificate privileges. The failure to make a good faith effort to identify and remit this tax liability may result in the assessment of the fifty percent penalty for the misuse of resale certificate privileges.~~

~~(b) **Tax paid at source deduction.** If the buyer has not given a resale certificate, but has paid retail sales tax on all articles of tangible personal property and subsequently resells a portion of the articles, the buyer must collect the retail sales tax from its retail customers as provided by law. When reporting these sales on the excise tax return, the buyer may then claim a deduction in the amount the buyer paid for the property resold.~~

~~(i) This deduction may be claimed under the retail sales tax classification only. It must be identified as a "taxable amount for tax paid at source" deduction on the deduction detail worksheet, which must be filed with the excise tax return. Failure to properly identify the deduction may result in the disallowance of the deduction. When completing the local sales tax portion of the tax return, the deduction must be computed at the local sales tax rate paid to the seller, and credited to the seller's tax location code.~~

~~(ii) The following example illustrates the tax paid at source deduction on or after July 1, 2008. This example should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances. Seller A is located in Spokane, Washington and purchases equipment parts for dual purposes from a supplier located in Seattle, Washington. The supplier ships the parts to Spokane. Seller A does not issue a resale certificate for the purchase, and remits retail sales tax to the supplier at the Spokane tax rate. A portion of these parts are sold and shipped to Customer B in Kennewick, with retail sales tax collected at the Kennewick tax rate. Seller A must report the amount of the sale to Customer B on its excise tax return, compute the local sales tax liability at the Kennewick rate, and code this liability to the location code for Kennewick (0302). Seller A would claim the tax paid at source deduction for the cost of the parts resold to Customer B, compute the local sales tax credit at the Spokane rate, and code this deduction amount to the location code for Spokane (3210).~~

~~(iii) Claim for deduction will be allowed only if the~~

taxpayer keeps and preserves records in support of the deduction that show the names of the persons from whom such articles were purchased, the date of the purchase, the type of articles, the amount of the purchase and the amount of tax that was paid.

(iv) ~~Should the buyer resell the articles at wholesale, or under other situations where retail sales tax is not to be collected, the claim for the tax paid at source deduction on a particular excise tax return may result in a credit. In such cases, the department will issue a credit notice that may be used against future tax liabilities. However, a taxpayer may request in writing a refund from the department.~~

~~(12) **Waiver of penalty for resale certificate misuse.** The department may waive the penalty imposed for resale certificate misuse upon finding that the use of the certificate to purchase items or services by a person not entitled to use the certificate for that purpose was due to circumstances beyond the control of the buyer. However, the use of a resale certificate to purchase items or services for personal use outside of the business does not qualify for the waiver or cancellation of the penalty. The penalty will not be waived merely because the buyer was not aware of either the proper use of the resale certificate or the penalty. In all cases the burden of proving the facts is upon the buyer.~~

~~(a) **Considerations for waiver.** Situations under which a waiver of the penalty will be considered by the department include, but are not necessarily limited to, the following:~~

~~(i) The resale certificate was properly used to purchase products or services for dual purposes; or the buyer was eligible to issue the resale certificate; and the buyer made a good faith effort to discover all of its deferred sales tax liability within one hundred twenty days of purchase; and the buyer remitted the discovered tax liability upon the next excise tax return. (Refer to subsection (11)(a)(i) of this section for an explanation of what constitutes "good faith effort.")~~

~~(ii) The certificate was issued and/or purchases were made without the knowledge of the buyer, and had no connection with the buyer's business activities. However, the penalty for the misuse of resale certificate privileges may be applied to the person actually issuing and/or using the resale certificate without knowledge of the buyer.~~

~~(b) **One-time waiver of penalty for inadvertent or unintentional resale certificate misuse.** The penalty prescribed for the misuse of the resale certificate may be waived or cancelled on a one time only basis if such misuse was inadvertent or unintentional, and the item was purchased for use within the business. If the department does grant a one time waiver of the penalty, the buyer will be provided written notification at that time.~~

~~(c) **Examples.** The following are examples of typical~~

~~situations where the fifty percent penalty for the misuse of resale privileges will or will not be assessed. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.~~

~~(i) ABC Manufacturing purchases electrical wiring and tools from X Supply. The electrical wiring is purchased for dual purposes, i.e., for resale and for consumption, with more than fifty percent of the wiring purchases becoming a component of items that ABC manufactures for sale. ABC Manufacturing issues a resale certificate to X Supply specifying "electrical wiring" as the category of items purchased for resale. ABC regularly reviews its purchases and remits deferred sales tax upon the wiring it uses as a consumer.~~

~~ABC is subsequently audited by the department and it is discovered that ABC Manufacturing failed to remit deferred sales tax upon three purchases of wiring for consumption. The unreported tax liability attributable to these three purchases is less than five percent of the total deferred sales tax liability for wiring purchases made from X Supply. It is also determined that the failure to remit deferred sales tax upon these purchases was merely an oversight. The fifty percent penalty for the misuse of resale certificate privileges does not apply, even though ABC failed to remit deferred sales tax on these purchases. The resale certificate was properly issued, and ABC remitted to the department more than eighty percent of the deferred sales tax liability for wiring purchases from X Supply.~~

~~(ii) During a routine audit examination of a jewelry store, the department discovers that a dentist has provided a resale certificate for the purchase of a necklace. This resale certificate indicates that in addition to operating a dentistry practice, the dentist also sells jewelry. The resale certificate contains the information required under RCW 82.04.470.~~

~~Upon further investigation, the department finds that the dentist is not engaged in selling jewelry. The department will look to the dentist for payment of the applicable retail sales tax. In addition, the dentist will be assessed the fifty percent penalty for the misuse of resale certificate privileges. The penalty will not be waived or cancelled as the dentist misused the resale certificate privileges to purchase a necklace for personal use.~~

~~(iii) During a routine audit examination of a computer dealer, it is discovered that a resale certificate was obtained from a bookkeeping service. The resale certificate was completed in its entirety and accepted by the dealer. Upon further investigation it is discovered that the bookkeeping service had no knowledge of the resale certificate, and had made~~

~~no payment to the computer dealer. The employee who signed the resale certificate had purchased the computer for personal use, and had personally made payment to the computer dealer.~~

~~The fifty percent penalty for the misuse of the resale certificate privileges will be waived for the bookkeeping service. The bookkeeping service had no knowledge of the purchase or unauthorized use of the resale certificate. However, the department will look to the employee for payment of the taxes and the fifty percent penalty for the misuse of resale certificate privileges.~~

~~(iv) During an audit examination it is discovered that XYZ Corporation, a duplicating company, purchased copying equipment for its own use. XYZ Corporation issued a resale certificate to the seller despite the fact that XYZ does not sell copying equipment. XYZ also failed to remit either the deferred sales or use tax to the department. As a result of a previous investigation by the department, XYZ had been informed in writing that retail sales and/or use tax applied to all such purchases. The fifty percent penalty for the misuse of resale certificate privileges will be assessed. XYZ was not eligible to provide a resale certificate for the purchase of copying equipment, and had previously been so informed. The penalty will apply to the unremitted deferred sales tax liability.~~

~~(v) AZ Construction issued a resale certificate to a building material supplier for the purchase of "pins" and "loads." The "pins" are fasteners that become a component part of the finished structure. The "load" is a powder charge that is used to drive the "pin" into the materials being fastened together. AZ Construction is informed during the course of an audit examination that it is considered the consumer of the "loads" and may not issue a resale certificate for its purchase thereof. AZ Construction indicates that it was unaware that a resale certificate could not be issued for the purchase of "loads," and there is no indication that AZ Construction had previously been so informed.~~

~~The failure to be aware of the proper use of the resale certificate is not generally grounds for waiving the fifty percent penalty for the misuse of resale certificate privileges. However, AZ Construction does qualify for the "one time only" waiver of the penalty as the misuse of the resale certificate privilege was unintentional and the "loads" were purchased for use within the business.))~~ (1) Introduction. This section provides information about reseller permits issued by the department of revenue (department). Effective January 1, 2010, reseller permits replaced resale certificates as the documentation necessary to substantiate the wholesale nature of a sales transaction. Reseller permits are issued to businesses that make wholesale purchases, such as retailers, wholesalers, manufacturers, and qualified contractors. The permits allow

businesses to purchase certain items or services at wholesale without paying retail sales tax. Additional information can be found on the department's internet site: <http://dor.wa.gov>.

(a) What other sections provide related information? The following sections may contain additional relevant information:

 WAC 458-20-10201 (Application process and eligibility requirements for reseller permits) for more information about the application process and eligibility requirements for obtaining a reseller permit;

 WAC 458-20-10202 (Brief adjudicative proceedings for matters related to reseller permits) for more information about the procedures for appealing the denial of an application for a reseller permit; and

 WAC 458-20-102A (Resale certificates), which explains the resale certificate documentation requirements for wholesale sales occurring before January 1, 2010.

(b) Examples. This section contains examples which identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(2) What is a reseller permit? A reseller permit is a document issued to a business by the department that the business provides to a seller to substantiate a wholesale purchase. Each reseller permit contains a unique identifying number. Businesses should keep the original permit and make and distribute copies of the permit to sellers from whom they make wholesale purchases as described in subsection (6) of this section. Sellers can store copies of reseller permits in either paper or electronic format.

The reseller permit document issued by the department contains an optional, blank "Notes" section in which the permit holder can provide additional information, such as a description of the items or services the permit holder wishes to purchase at wholesale.

(3) Who may use a reseller permit? The buyer may authorize any person in its employ to use a copy of the buyer's reseller permit on the buyer's behalf. However, misuse of the reseller permit subjects the buyer to:

 Revocation of the reseller permit;

 Penalties as provided in RCW 82.32.290 and 82.32.291; and

 Tax, interest, and any other penalties imposed by law.

The buyer is responsible for educating all persons authorized to use the reseller permit on the proper use of the buyer's reseller permit.

(4) How long is a reseller permit effective? Except as otherwise provided in this subsection, reseller permits are generally valid for a period of forty-eight months from the date

of issuance, renewal, or reinstatement.

(a) **Conditions when permit is effective for twenty-four months.** A reseller permit is valid for a period of twenty-four months and may be renewed for a period of forty-eight months, effective July 1, 2010, if the permit is issued to a taxpayer who:

(i) Is not registered with the department under RCW 82.32.030;

(ii) Has been registered with the department under RCW 82.32.030 for a continuous period of less than one year as of the date that the department received the taxpayer's application for a reseller permit;

(iii) Was on nonreporting status as authorized under RCW 82.32.045(4) at the time that the department received the taxpayer's application for a reseller permit or to renew or reinstate a reseller permit;

(iv) Has filed tax returns reporting no business activity for purposes of sales and business and occupation taxes for the twelve-month period immediately preceding the date that the department received the taxpayer's application for a reseller permit or to renew or reinstate a reseller permit; or

(v) Has failed to file tax returns covering any part of the twelve-month period immediately preceding the department's receipt of the taxpayer's application for a reseller permit or to renew or reinstate a reseller permit.

(b) **Federally recognized Indian tribe.** The provisions of (a) of this subsection do not apply to reseller permits issued to any business owned by a federally recognized Indian tribe or by an enrolled member of a federally recognized Indian tribe, if the business does not engage in any business activity that subjects the business to the B&O tax (chapter 82.04 RCW). Permits issued to such businesses are valid for forty-eight months from the date of issuance, renewal, or reinstatement.

(c) **Contractors.** Except as otherwise provided in this subsection (c), until June 20, 2013, a reseller permit issued, renewed, or reinstated to a "contractor" as defined in WAC 458-20-10201(302) will be valid for a period of twelve months from the date of issuance, renewal, or reinstatement.

(i) Beginning July 1, 2013, reseller permits issued, renewed, or reinstated to a contractor will be valid for a period of twenty-four months from the date of issuance, renewal, or reinstatement.

(ii) However, the department may issue, renew, or reinstate permits for a period of twenty-four months beginning July 1, 2011, if the department is satisfied that the contractor is entitled to make purchases at wholesale and that issuing or renewing the reseller permit in this manner is unlikely to jeopardize collection of sales taxes due based on the criteria discussed in WAC 458-20-10201(305).

(d) **Renewal of reseller permit.** Applications to renew a reseller permit cannot be made more than ninety days before the expiration of the reseller permit.

(e) **Business ownership change.** A new reseller permit is required whenever a change in the ownership of the buyer's business requires a new tax registration. (See WAC 458-20-101 Tax registration and tax reporting.) The new business may not make purchases under the authority of the reseller permit issued to the business before the change in ownership.

(f) **Revoked or invalid reseller permit.** Purchases may not be made under the authority of a reseller permit that has been revoked by the department or is otherwise invalid. For more information about reseller permit revocation or other invalidation of reseller permits, see subsection (14) of this section.

(5) **Sales at wholesale.** All sales are treated as retail sales unless the seller takes from the buyer a copy of a reseller permit, a uniform exemption certificate authorized by RCW 82.04.470, or obtains the data elements as described in subsection (7) of this section. Reseller permits may only be used for sales at wholesale and generally may not be used as proof of entitlement to retail sales tax exemptions otherwise provided by law.

(6) **When may a buyer use a reseller permit?** The buyer may use a reseller permit only when making wholesale purchases. (See RCW 82.04.060 for additional information.) The reseller permit may not be used when making tax-exempt retail purchases.

(7) **Seller's responsibilities.** The seller has the burden of proving that the buyer had a reseller permit at the time of sale. A seller may meet its burden by taking from the buyer, at the time of sale or within one hundred twenty days after the sale, a copy of a reseller permit issued to the buyer by the department under RCW 82.32.780 or 82.32.783.

(a) In lieu of a copy of a reseller permit issued by the department, pursuant to RCW 82.04.470 a seller may accept from a buyer that is **required** to be registered with the department under RCW 82.32.030:

(i) A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board; or

(ii) Any other exemption certificate as may be authorized by the department and properly completed by the buyer.

(b) Certificates authorized in (a)(i) and (ii) of this subsection must include the reseller permit number issued by the department to the buyer.

(c) A seller who accepts exemption certificates authorized in (a) of this subsection is not required to verify with the department whether the buyer is required to be registered with the department under RCW 82.32.030. It must be noted, however,

that nothing in this subsection (c) may be construed to modify any of the provisions of RCW 82.08.050.

(d) In lieu of a copy of a reseller permit issued by the department, pursuant to RCW 82.04.470 a seller may accept from a buyer that is **not required** to be registered with the department under RCW 82.32.030:

(i) A properly completed uniform sales and use tax exemption certificate developed by the multistate tax commission;

(ii) A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board; or

(iii) Any other exemption certificate as may be authorized by the department and properly completed by the buyer.

The Streamlined Sales and Use Tax Agreement Certificate of Exemption and Multistate Tax Commission Uniform Sales and Use Tax Exemption Certificate can each be obtained on the department's internet site at <http://dor.wa.gov>.

(e) A seller who accepts a uniform exemption certificate authorized in (d) of this subsection is not required to verify with the department whether the buyer is required to be registered with the department under RCW 82.32.030. It must be noted, however, that nothing in this subsection (e) may be construed to modify any of the provisions of RCW 82.08.050.

(f) **Data elements.** In lieu of obtaining a reseller permit or the documentation in (a) or (d) of this subsection, RCW 82.08.050(7) authorizes a seller to capture the relevant data elements as allowed under the streamlined sales and use tax agreement. "Data elements" are the information required to be supplied on the actual Streamlined Sales and Use Tax Agreement Certificate of Exemption: Name, address, type of business, reason for exemption, identification number required by the state to which the sale is sourced, state and country issuing identification number, and if a paper form is used, a signature of the purchaser. See Streamlined Sales Tax Governing Board, Inc. Rule 317.1 (A) for more information.

(g) **The term "reseller permit."** For purposes of this section, unless otherwise specified, the term "reseller permit" hereinafter contemplates all of the following: A copy of a reseller permit, a uniform exemption certificate authorized by RCW 82.04.470 as described in (a) and (d) of this subsection, or data elements as described in (f) of this subsection.

(h) **Seller must provide documentation or information.** If the seller has not obtained a reseller permit or the documentation described in (a), (b), (d), or (f) of this subsection, the seller is liable for the tax due unless it can sustain the burden of proving that a sale is a wholesale sale by demonstrating facts and circumstances that show the sale was properly made at wholesale. The department will consider all

evidence presented by the seller, including the circumstances of the sales transaction itself, when determining whether the seller has met its burden of proof. It is the seller's responsibility to provide the information necessary to evaluate the facts and circumstances of all sales transactions for which reseller permits are not obtained. Facts and circumstances that should be considered include, but are not necessarily limited to, the following:

 The nature of the buyer's business. The items being purchased at wholesale must be consistent with the buyer's business. For example, a buyer having a business name of "Ace Used Cars" would generally not be expected to be in the business of selling furniture;

 The nature of the items sold. The items sold must be of a type that would normally be purchased at wholesale by the buyer; and

 Additional documentation. Other available documents, such as purchase orders and shipping instructions, should be considered in determining whether they support a finding that the sales are sales at wholesale.

(i) Annual electronic verification. Notwithstanding anything in RCW 82.04.470 to the contrary, a seller who maintains records establishing that it uses electronic means to verify, at least once per calendar year, the validity of its customers' reseller permits need not take a copy of a reseller permit or other documentation or the data elements as authorized in (a), (d), or (f) of this subsection for wholesale sales to those customers with valid reseller permits as confirmed by the department for all sales occurring within twelve months following the date that the seller last electronically verified the validity of its customers' reseller permits, using the department's reseller permit verification system. A seller that meets the requirements of this subsection will be deemed to have met its burden of proving a sale is a wholesale sale rather than a retail sale.

(j) Can a seller request a refund for sales tax paid out-of-pocket after obtaining appropriate documentation? If the seller is required to make payment to the department, and later is able to present the department with proper documentation or prove by facts and circumstances that the sales in question are wholesale sales, the seller may in writing request a refund of the taxes paid along with the applicable interest. Both the request and the documentation or proof that the sales in question are wholesale sales must be submitted to the department within the statutory time limitations provided by RCW 82.32.060. (See WAC 458-20-229 Refunds.) However, refer to (m) of this subsection in the event of an audit situation.

(k) Timing requirements for single orders with multiple billings. If a single order or contract will result in multiple

billings to the buyer, and a reseller permit was not obtained or on file at the time the order was placed or the contract entered, a reseller permit must be received by the seller within one hundred twenty days after the first billing. For example, a subcontractor entering into a construction contract for which it has not received a reseller permit must obtain it within one hundred twenty days of the initial construction draw request, even though the construction project may not be completed at that time and additional draw requests will follow.

(l) Proof of wholesale sales obtained, from a buyer not required to be registered, after one hundred twenty days have passed from sale date. If proof that a sale was a wholesale sale is obtained more than one hundred twenty days after the sale or sales in question, the nonregistered buyer must specifically identify the sale or sales to which it applies. Certificates, such as a uniform exemption certificate, used must be accompanied by other documentation signed by the buyer specifically identifying the sales in question and stating that the provisions of the accompanying certificate apply. A nonspecific certificate that is not obtained within one hundred twenty days is generally not, in and of itself, acceptable proof of the wholesale nature of the sales in question. The certificate and/or required documentation must be obtained within the statutory time limitations provided by RCW 82.32.050.

(m) Additional time to secure documentation in audit situation. If in event of an audit the department discovers that the seller has not secured, as described in this subsection, the necessary certificates and/or documentation, the seller will generally be allowed one hundred twenty days in which to obtain and present appropriate certificates and/or documentation, or prove by facts and circumstances the sales in question are wholesale sales. The time allotted to the seller will commence from the date the auditor initially provides the seller with the results of the auditor's wholesale sales review. The processing of the audit report will not be delayed as a result of the seller's failure within the allotted time to secure and present appropriate documentation, or its inability to prove by facts and circumstances that the sales in question were wholesale sales.

(8) Department's reseller permit verification system. Pursuant to RCW 82.32.785, the department has developed a system available on its internet site that allows sellers to voluntarily verify whether their customers' reseller permits are valid. Sellers are under no obligation to use the verification system. The system is accessible at the department's internet site: <http://dor.wa.gov>. Information available on the system includes the name of the permit holder, the status of the reseller permit, and the expiration date of the permit.

(9) Penalty for improper use of reseller permit. If any

buyer improperly uses a reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.470 to purchase items or services at retail without payment of sales tax that was legally due on the purchase, the department must assess against that buyer a penalty of fifty percent of the tax due on the improperly purchased item or service. See RCW 82.32.291. This penalty is in addition to all other taxes, penalties, and interest due, and can be imposed even if there was no intent to evade the payment of retail sales tax. The penalty will be assessed by the department and applies only to the buyer. However, see subsection (13) of this section for situations in which the department must waive the penalty.

(a) **Improper use of reseller permit.** A buyer that purchases items or services at retail without payment of sales tax legally due on the purchase is deemed to have improperly used a reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.470 to purchase the items or services without payment of sales tax and is subject to the penalty described above in this subsection if the buyer:

(i) Furnished to the seller a reseller permit number, a reseller permit or copy of a reseller permit, or other documentation authorized under RCW 82.04.470 to avoid payment of sales tax legally due on the purchase; or

(ii) Made the purchase from a seller that had previously used electronic means to verify the validity of the buyer's reseller permit with the department and, as a result, did not require the buyer to provide a copy of its reseller permit or furnish other documentation authorized under RCW 82.04.470 to document the wholesale nature of the purchase. In such cases, the buyer bears the burden of proving that the purchases made without payment of sales tax were qualified purchases or the buyer remitted deferred sales tax directly to the department. The buyer not realizing that sales tax was not paid at the time of purchase is not reason for waiving the penalty.

Persons who purchase articles or services for dual purposes (i.e., some for their own consumption and some for resale) should refer to subsection (12) of this section to determine whether they may furnish a reseller permit to the seller.

(b) **Examples.**

(i) During a routine audit examination of a jewelry store, the department discovers that a dentist has furnished a reseller permit for the purchase of a necklace. The "Notes" section of the reseller permit indicates that in addition to operating a dentistry practice, the dentist also sells jewelry. The jewelry store correctly accepted the reseller permit as appropriate documentation.

Upon further investigation, the department finds that the dentist is not engaged in selling jewelry. The department will impose the retail sales tax, interest, and the fifty percent

penalty for improper use of the reseller permit against the dentist.

(ii) M&M Plumbing Supply (M&M) has several regular customers who make purchases at wholesale. M&M uses the department's reseller permit verification system to find all regular customers that have a reseller permit. M&M keeps the required data elements in its system and begins to make wholesale sales to all customers the system shows have a reseller permit. While it is best for sellers to ensure customers intend to purchase at wholesale, in this case, M&M has satisfied its requirement to ensure that customers making wholesale purchases have reseller permits. It is the customer's responsibility to review purchase invoices to ensure that deferred sales tax is paid if the purchase is not a valid wholesale purchase. If the customer does not pay the tax due on the next tax return, the misuse penalty will be assessed.

(10) **Sales to nonresident buyers.** If the buyer is a nonresident who is not engaged in business in this state and is not required to be registered with the department under RCW 82.32.030 but buys articles here for the purpose of resale in the regular course of business outside this state, the seller may accept the following from the buyer in lieu of a reseller permit:

(a) A properly completed uniform sales and use tax exemption certificate developed by the multistate tax commission; or

(b) A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board. Nonresident buyers who are not required to be registered with the department under RCW 82.32.030 are nonetheless eligible to apply for and receive a reseller permit. For more information about the application process and eligibility requirements for reseller permits, see WAC 458-20-10201 (Application process and eligibility requirements for reseller permits).

(11) **Sales to farmers.** Farmers selling agricultural products only at wholesale are generally not required to register with the department. (See WAC 458-20-101 Tax registration and tax reporting.)

(a) **Registered farmers.** Farmers who are required to be registered with the department must obtain a reseller permit to substantiate wholesale purchases. In lieu of a copy of a reseller permit issued by the department, a seller may accept from a farmer that is registered with the department a properly completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions as long as that certificate includes the reseller permit number issued by the department to the farmer.

(b) **Unregistered farmers.** Farmers not required to be registered with the department may provide, and the seller may

accept, any of the following documents to substantiate the wholesale nature of a purchase in lieu of a reseller permit:

(i) A Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions;

(ii) A properly completed uniform sales and use tax exemption certificate developed by the multistate tax commission; or

(iii) A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board.

Farmers who are not required to be registered with the department are nonetheless eligible to apply for and receive a reseller permit. For more information about the application process and eligibility requirements for reseller permits, see WAC 458-20-10201 (Application process and eligibility requirements for reseller permits).

(12) **Purchases for dual purposes.** A buyer normally engaged in both consuming and reselling certain types of tangible personal property, and not able to determine at the time of purchase whether the particular property purchased will be consumed or resold, must purchase according to the general nature of the buyer's business. RCW 82.08.130. If the buyer principally consumes the articles in question, the buyer should not give a reseller permit for any part of the purchase. If the buyer principally resells the articles, the buyer may furnish a reseller permit for the entire purchase. For the purposes of this subsection, the term "principally" means greater than fifty percent.

(a) **Deferred sales tax liability.** If the buyer gives a reseller permit for all purchases and thereafter consumes some of the articles purchased, the buyer must remit the deferred sales tax on the value of the article used to the department. The deferred sales tax liability should be reported under the use tax classification on the buyer's excise tax return.

(i) Buyers making purchases for dual purposes under the provisions of a reseller permit must remit deferred sales tax on all products or services they consume. If the buyer fails to make a good faith effort to remit this tax liability, the penalty for the misuse of a reseller permit will be assessed. This penalty will apply to the unremitted portion of the deferred sales tax liability.

A buyer will generally be considered to be making a good faith effort to report its deferred sales tax liability if the buyer discovers a minimum of eighty percent of the deferred sales tax liability within one hundred twenty days of purchase, and remits the full amount of the discovered tax liability upon the next excise tax return. However, if the buyer does not satisfy this eighty percent threshold and can show by other facts and circumstances that it made a good faith effort to

report the tax liability, the penalty will not be assessed. Likewise, if the department can show by other facts and circumstances that the buyer did not make a good faith effort in remitting its tax liability the penalty will be assessed, even if the eighty percent threshold is satisfied.

(ii) The following example illustrates the use of a reseller permit for dual-use purchases.

BC Contracting operates both as a prime contractor and speculative builder of residential homes. BC Contracting purchases building materials from seller that are principally incorporated into projects upon which BC acts as a prime contractor. BC provides seller with a reseller permit and purchases all building materials at wholesale. BC must remit deferred sales tax upon all building materials incorporated into the speculative projects to be considered to be properly using its reseller permit.

(b) **Tax paid at source deduction.** If the buyer has not provided a reseller permit to the seller but has paid retail sales tax on all articles of tangible personal property and subsequently resells a portion of the articles, the buyer must collect the retail sales tax from its retail customers as provided by law. When reporting these sales on the excise tax return, the buyer may then claim a deduction to recover the sales tax paid for the property resold.

(i) This deduction may be claimed under the retail sales tax classification only. It must be identified as a "taxable amount for tax paid at source" deduction on the deduction detail worksheet, which must be filed with the excise tax return. Failure to properly identify the deduction may result in the disallowance of the deduction. When completing the local sales tax portion of the tax return, the deduction must be computed at the local sales tax rate paid to the seller, and credited to the seller's tax location code.

(ii) The following example illustrates the tax paid at source deduction on or after July 1, 2008.

A seller is located in Spokane, Washington, and purchases equipment parts for dual purposes from a supplier located in Seattle, Washington. The supplier ships the parts to Spokane. The seller does not furnish a reseller permit for the purchase, and remits retail sales tax to the supplier at the Spokane tax rate. A portion of these parts are sold and shipped to a customer in Kennewick, with retail sales tax collected at the Kennewick tax rate. The seller must report the amount of the sale to the customer on its excise tax return and compute the local sales tax liability using the Kennewick location code (0302) and rate. The seller would claim the tax paid at source deduction for the cost of the parts resold to the customer and compute the local sales tax credit using the Spokane location code (3210) and rate.

(iii) Claim for deduction will be allowed only if the taxpayer keeps and preserves records in support of the deduction that include the names of the persons from whom such articles were purchased, the date of the purchase, the type of articles, the amount of the purchase and the amount of tax that was paid.

(iv) Should the buyer resell the articles at wholesale, or under other situations where retail sales tax is not to be collected, the claim for the tax paid at source deduction on a particular excise tax return may result in a credit. In such cases, the department will issue a credit notice that may be used against future tax liabilities. However, a taxpayer may request in writing a refund from the department.

(13) **Waiver of penalty for misuse of reseller permits.** The department will waive the penalty imposed for misuse of reseller permits upon finding that the use of the reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.470 to purchase items or services by a person not entitled to use the reseller permit for that purpose was due to circumstances beyond the control of the buyer or if the reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.470 was properly used for purchases for dual purposes and the buyer made a good faith effort to report deferred sales tax. However, the use of a reseller permit to purchase items or services for personal use outside of the business does not qualify for the waiver or cancellation of the penalty. The penalty will not be waived merely because the buyer was not aware of either the proper use of the reseller permit or the penalty. In all cases the burden of proving the facts is upon the buyer.

Example. During a routine audit examination of a computer dealer, it is discovered that a reseller permit was obtained from a bookkeeping service. Upon further investigation it is discovered that the bookkeeping service had no knowledge of the reseller permit, and had made no payment to the computer dealer. The employee who furnished the reseller permit had purchased the computer for personal use, and had personally made payment to the computer dealer.

The fifty percent penalty for the misuse of the reseller permit will be waived for the bookkeeping service. The bookkeeping service had no knowledge of the purchase or unauthorized use of the reseller permit. However, the department will impose the taxes, interest, and the fifty percent penalty for the misuse of the reseller permit against the employee.

(14) **Reseller permit revocation or other invalidation.** A reseller permit is no longer valid if the permit holder's certificate of registration is revoked, the permit holder's tax reporting account is closed by the department, or the permit holder otherwise ceases to engage in business.

(a) Closing of an account. A taxpayer who ceases to engage in business will have its tax reporting account closed by the department. The account can be closed per the request of the taxpayer or administratively by the department. The department will administratively close a tax reporting account if a taxpayer has not reported any gross income or filed a return within the last two years. For more information about administrative closure and reopening of taxpayer accounts, see WAC 458-20-101.

(b) Reseller permit revocation. The department may revoke a reseller permit of a taxpayer for any of the following reasons:

(i) The taxpayer used or allowed or caused its reseller permit to be used to purchase any item or service without payment of sales tax, but the taxpayer or other purchaser was not entitled to use the reseller permit for the purchase;

(ii) The department issued the reseller permit to the taxpayer in error;

(iii) The department determines that the taxpayer is no longer entitled to make purchases at wholesale; or

(iv) The department determines that revocation of the reseller permit would be in the best interest of collecting taxes due under Title 82 RCW.

(c) Use of invalidated or revoked reseller permit. A taxpayer whose reseller permit has been revoked or whose tax reporting account has been administratively closed by the department as discussed in (a) of this subsection will receive notice of the revocation or invalidation in writing. The revocation or invalidation is effective on the date specified in the revocation or invalidation notice. Use of a revoked or invalidated permit will result in the fifty percent penalty for improper use of a reseller permit as discussed in subsection (9) of this section.

(d) Reinstatement of reseller permit. A taxpayer who wishes to have its reseller permit reinstated after invalidation or revocation must apply to the department. For more information about the application process for reseller permits, see WAC 458-20-10201 (Application process and eligibility requirements for reseller permits).

(e) Requests for reinstatement. The department may refuse to reinstate a reseller permit revoked under (b)(i) of this subsection until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full. In the event a taxpayer whose reseller permit has been revoked under (b)(i) of this subsection reorganizes, the new business resulting from the reorganization is not entitled to a reseller permit until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full.

(f) Business reorganization. For purposes of this

subsection, "reorganize" or "reorganization" means:

(i) The transfer, however affected, of a majority of the assets of one business to another business where any of the persons having an interest in the ownership or management in the former business maintain an ownership or management interest in the new business, either directly or indirectly;

(ii) A mere change in identity or form of ownership, however affected; or

(iii) The new business is a mere continuation of the former business based on significant shared features such as owners, personnel, assets, or general business activity.

(15) **Request for copies.** A person must, upon request of the department, provide the department with paper or electronic copies of all reseller permits, or other documentation as authorized in RCW 82.04.470, accepted by that person during the period specified by the department to substantiate wholesale sales. If, instead of the documentation specified in this subsection, the seller has retained the relevant data elements from such permits or other documentation authorized in RCW 82.04.470, as allowed under the streamlined sales and use tax agreement, the seller must provide such data elements to the department.

THIS PROPOSED RULE IS SUBMITTED FOR PUBLIC COMMENTS AFTER INPUT FROM INTERESTED PARTIES AND IS TO BE USED SOLELY FOR DISCUSSION PURPOSES AT THE PUBLIC HEARING ON THE PROPOSED RULE. UNDER NO CIRCUMSTANCES IS THIS PROPOSED RULE TO BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS.

NEW SECTION

WAC 458-20-102A Resale certificates. (1) Introduction. This section provides information regarding the use of resale certificates, which were the documents used to substantiate the wholesale nature of a sales transaction occurring prior to January 1, 2010. Resale certificates cannot be used to substantiate wholesale sales made after December 31, 2009.

This section provides information that applies to periods prior to January 1, 2010. It explains the conditions under which a buyer may furnish a resale certificate to a seller, and explains the information and language required on the resale certificate. This section also provides tax reporting information to persons who purchase articles or services for dual purposes (i.e., for both resale and consumption).

(a) **Legislation passed in 2009.** Effective January 1, 2010, reseller permits issued by the department of revenue (department) replace resale certificates as the documentation necessary to substantiate the wholesale nature of a sales transaction (chapter 563, Laws of 2009).

Businesses should consult:

✎ WAC 458-20-102 (Reseller permits) for more information about the use of reseller permits to substantiate wholesale sales beginning January 1, 2010;

✎ WAC 458-20-10201 (Application process and eligibility requirements for reseller permits) for more information about the application process and eligibility requirements for obtaining a reseller permit; and

✎ WAC 458-20-10202 (Brief adjudicative proceedings for matters related to reseller permits) for more information about the procedures for appealing the denial of an application for a reseller permit.

(b) **Legislation passed in 2003.** In 2003, the legislature enacted legislation conforming state law to portions of the national Streamlined Sales and Use Tax Agreement (chapter 168, Laws of 2003), which eliminates the good faith requirement when the seller takes from the buyer a resale certificate and also eliminates signature requirements for certificates provided in a format other than paper. These changes apply to resale certificates taken on and after July 1, 2004.

(c) **Legislation passed in 2007.** Additional Streamlined Sales and Use Tax Agreement legislation was enacted in 2007 (chapter 6,

Laws of 2007). It eliminates the provision that resale certificates are only valid for four years from the date they are issued to the seller, as long as there is a recurring business relationship between the buyer and seller. This change is effective on July 1, 2008.

(2) **What is a resale certificate?** The resale certificate is a document or combination of documents that substantiates the wholesale nature of a sale. The resale certificate cannot be used for purchases that are not purchases at wholesale, or where a more specific certificate, affidavit, or other documentary evidence is required by statute or other section of chapter 458-20 WAC. While the resale certificate may come in different forms, all resale certificates must satisfy the language and information requirements of RCW 82.04.470.

(a) **What is the scope of a resale certificate?** Depending on the statements made on the resale certificate, the resale certificate may authorize the buyer to purchase at wholesale all products or services being purchased from a particular seller, or may authorize only selected products or services to be purchased at wholesale. The provisions of the resale certificate may be limited to a single sales transaction, or may apply to all sales transactions as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. Whatever its form and/or purpose, the resale certificate must be completed in its entirety and signed by a person who is authorized to make such a representation on behalf of the buyer.

(b) **Who may issue and sign certificates?** The buyer may authorize any person in its employ to issue and sign resale certificates on the buyer's behalf. The buyer is, however, responsible for the information contained on the resale certificate. A resale certificate is not required to be completed by every person ordering or making the actual purchase of articles or services on behalf of the buyer. For example, a construction company that authorizes only its bookkeeper to issue resale certificates on its behalf may authorize both the bookkeeper and a job foreman to purchase items under the provisions of the resale certificate. The construction company is not required to provide, nor is the seller required to obtain, a resale certificate signed by each person making purchases on behalf of the construction company.

The buyer is responsible for educating all persons authorized to issue and/or use the resale certificate on the proper use of the buyer's resale certificate privileges.

(3) **Resale certificate renewal.** Prior to July 1, 2008, resale certificates must be renewed at least every four years. As of July 1, 2008, the requirement to renew resale certificates at least every four years has been eliminated. The buyer must renew its resale certificate whenever a change in the ownership of the buyer's business requires a new tax registration. (See WAC 458-20-101 Tax registration and tax reporting.) The buyer may not make purchases

under the authority of a resale certificate bearing a tax registration number that has been canceled or revoked by the department of revenue (department).

(4) **Sales at wholesale.** All sales are treated as retail sales unless the seller takes from the buyer a properly executed resale certificate. Resale certificates may only be used for sales at wholesale and may not be used as proof of entitlement to retail sales tax exemptions otherwise provided by law.

(a) **When may a buyer issue a resale certificate?** The buyer may issue a resale certificate only when the property or services purchased are:

(i) For resale in the regular course of the buyer's business without intervening use by the buyer;

(ii) To be used as an ingredient or component part of a new article of tangible personal property to be produced for sale;

(iii) A chemical to be used in processing an article to be produced for sale (see WAC 458-20-113 on chemicals used in processing);

(iv) To be used in processing ferrosilicon that is subsequently used in producing magnesium for sale;

(v) Provided to consumers as a part of competitive telephone service, as defined in RCW 82.04.065;

(vi) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use in the federal conservation reserve program or its successor administered by the United States Department of Agriculture; or

(vii) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use by a farmer for producing for sale any agricultural product. (See WAC 458-20-210 on sales to and by farmers.)

(b) **Required information.** All resale certificates, whether paper or nonpaper format, must contain the following information:

(i) The name and address of the buyer;

(ii) The uniform business identifier or tax registration number of the buyer, if the buyer is required to be registered with the department;

(iii) The type of business;

(iv) The categories of items or services to be purchased at wholesale, unless the buyer is in a business classification that may present a blanket resale certificate as provided by the department by rule;

(v) The date on which the certificate was provided;

(vi) A statement that the items or services purchased either are purchased for resale in the regular course of business or are otherwise purchased at wholesale; and

(vii) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the certificate and that misuse of the resale certificate subjects the buyer to a penalty of fifty percent of the tax due, in addition

to the tax, interest, and any other penalties imposed by law.

(c) **Additional requirements for paper certificates.** In addition to the requirements stated in (b) of this subsection, paper certificates must contain the following:

(i) The name of the individual authorized to sign the certificate, printed in a legible fashion;

(ii) The signature of the authorized individual; and

(iii) The name of the seller. RCW 82.04.470.

(5) **Seller's responsibilities.** When a seller receives and accepts from the buyer a resale certificate at the time of the sale, or has a resale certificate on file at the time of the sale, or obtains a resale certificate from the buyer within one hundred twenty days after the sale, the seller is relieved of liability for retail sales tax with respect to the sale covered by the resale certificate. The seller may accept a legible fax, a duplicate copy of an original resale certificate, or a certificate in a format other than paper.

(a) If the seller has not obtained an appropriate resale certificate or other acceptable documentary evidence (see subsection (8) of this section), the seller is personally liable for the tax due unless it can sustain the burden of proving through facts and circumstances that the property was sold for one of the purposes set forth in subsection (4)(a) of this section. The department will consider all evidence presented by the seller, including the circumstances of the sales transaction itself, when determining whether the seller has met its burden of proof. It is the seller's responsibility to provide the information necessary to evaluate the facts and circumstances of all sales transactions for which resale certificates are not obtained. Facts and circumstances that should be considered include, but are not necessarily limited to, the following:

(i) The nature of the buyer's business. The items being purchased at wholesale must be consistent with the buyer's business. For example, a buyer having a business name of "Ace Used Cars" would generally not be expected to be in the business of selling furniture;

(ii) The nature of the items sold. The items sold must be of a type that would normally be purchased at wholesale by the buyer; and

(iii) Additional documentation. Other available documents, such as purchase orders and shipping instructions, should be considered in determining whether they support a finding that the sales are sales at wholesale.

(b) If the seller is required to make payment to the department, and later is able to present the department with proper documentation or prove by facts and circumstances that the sales in question are wholesale sales, the seller may in writing request a refund of the taxes paid along with the applicable interest. Both the request and the documentation or proof that the sales in question are wholesale sales must be submitted to the department within the statutory time limitations provided by RCW 82.32.060. (See WAC 458-20-229

Refunds.) However, refer to (f) of this subsection in event of an audit situation.

(c) **Timing requirements for single orders with multiple billings.** If a single order or contract will result in multiple billings to the buyer, and the appropriate resale certificate was not obtained or on file at the time the order was placed or the contract entered, the resale certificate must be received by the seller within one hundred twenty days after the first billing. For example, a subcontractor entering into a construction contract for which it has not received a resale certificate must obtain the certificate within one hundred twenty days of the initial construction draw request, even though the construction project may not be completed at that time and additional draw requests will follow.

(d) **Requirements for resale certificates obtained after one hundred twenty days have passed.** If the resale certificate is obtained more than one hundred twenty days after the sale or sales in question, the resale certificate must be specific to the sale or sales. The certificate must specifically identify the sales in question on its face, or be accompanied by other documentation signed by the buyer specifically identifying the sales in question and stating that the provisions of the accompanying resale certificate apply. A nonspecific resale certificate that is not obtained within one hundred twenty days is generally not, in and of itself, acceptable proof of the wholesale nature of the sales in question. The resale certificate and/or required documentation must be obtained within the statutory time limitations provided by RCW 82.32.050.

(e) **Examples.** The following examples explain the seller's documentary requirements in typical situations when obtaining a resale certificate more than one hundred twenty days after the sale. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) Beginning in January of year 1, MN Company regularly makes sales to ABC Inc. In June of the same year, MN discovers ABC has not provided a resale certificate. MN requests a resale certificate from ABC and, as the resale certificate will not be received within one hundred twenty days of many of the past sales transactions, requests that the resale certificate specifically identify those past sales subject to the provisions of the certificate. MN receives a legible fax copy of an original resale certificate from ABC on July 1st of that year. Accompanying the resale certificate is a memo providing a list of the invoice numbers for all past sales transactions through May 15th of that year. This memo also states that the provisions of the resale certificate apply to all past and future sales, including those listed. MN Company has satisfied the requirement that it obtain a resale certificate specific to the sales in question.

(ii) XYZ Company makes three sales to MP Inc. in October of year

1 and does not charge retail sales tax. In the review of its resale certificate file in April of the following year, XYZ discovers it has not received a resale certificate from MP Inc. and immediately requests a certificate. As the resale certificate will not be received within one hundred twenty days of the sales in question, XYZ requests that MP provide a resale certificate identifying the sales in question. MP provides XYZ with a resale certificate that does not identify the sales in question, but simply states "applies to all past purchases." XYZ Company has not satisfied its responsibility to obtain an appropriate resale certificate. As XYZ failed to secure a resale certificate within a reasonable period of time, XYZ must obtain a certificate specifically identifying the sales in question or prove through other facts and circumstances that these sales are wholesale sales. (Refer to (a) of this subsection for information on how a seller can prove through other facts and circumstances that a sale is a wholesale sale.) It remains the seller's burden to prove the wholesale nature of the sales made to a buyer if the seller has not obtained a valid resale certificate within one hundred twenty days of the sale.

(f) **Additional time to secure documentation in audit situation.**

If in event of an audit the department discovers that the seller has not secured, as described in this subsection (5), the necessary resale certificates and/or documentation, the seller will generally be allowed one hundred twenty days in which to obtain and present appropriate resale certificates and/or documentation, or prove by facts and circumstances the sales in question are wholesale sales. The time allotted to the seller shall commence from the date the auditor initially provides the seller with the results of the auditor's wholesale sales review. The processing of the audit report will not be delayed as a result of the seller's failure within the allotted time to secure and present appropriate documentation, or its inability to prove by facts and circumstances that the sales in question were wholesale sales.

(6) **Penalty for improper use.** Any buyer who uses a resale certificate to purchase items or services without payment of sales tax and who is not entitled to use the certificate for the purchase will be assessed a penalty of fifty percent of the tax due on the improperly purchased item or service. This penalty is in addition to all other taxes, penalties, and interest due, and can be imposed even if there was no intent to evade the payment of retail sales tax. The penalty will be assessed by the department and applies only to the buyer. However, see subsection (12) of this section for situations in which the department may waive the penalty.

Persons who purchase articles or services for dual purposes (i.e., some for their own consumption and some for resale) should refer to subsection (11) of this section to determine whether they may give a resale certificate to the seller.

(7) **Resale certificate - suggested form.** While there may be different forms of the resale certificate, all resale certificates

must satisfy the language and information requirements provided by RCW 82.04.470. The resale certificate is available on the department's internet site at <http://dor.wa.gov>, or can be obtained by calling the department's telephone information center at 1-800-647-7706 or by writing:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

A resale certificate may be in any other form that contains substantially the same information and language, except that certificates provided in a format other than paper are not required to include the printed name of the person authorized to sign the certificate, the signature of the authorized individual, or the name of the seller.

Effective July 1, 2008, buyers also have the option of using a Streamlined Sales and Use Tax Agreement Certificate of Exemption, which has been modified for Washington state laws. It can also be found on the department's internet site at <http://dor.wa.gov>.

(a) **Buyer's responsibility to specify products or services purchased at wholesale.** RCW 82.04.470 requires the buyer making purchases at wholesale to specify the kinds of products or services subject to the provisions of the resale certificate. A buyer who will purchase some of the items at wholesale, and consume and pay tax on some other items being purchased from the same seller, must use terms specific enough to clearly indicate to the seller what kinds of products or services the buyer is authorized to purchase at wholesale.

(i) The buyer may list the particular products or services to be purchased at wholesale, or provide general category descriptions of these products or services. The terms used to describe these categories must be descriptive enough to restrict the application of the resale certificate provisions to those products or services that the buyer is authorized to purchase at wholesale. The following are examples of terms used to describe categories of products purchased at wholesale, and businesses that may be eligible to use such terms on their resale certificates:

(A) "Hardware" for use by a general merchandise or building material supply store, "computer hardware" for use by a computer retailer;

(B) "Paint" or "painting supplies" for use by a general merchandise or paint retailer, "automotive paint" for use by an automotive repair shop; and

(C) "Building materials" or "subcontract work" for use by prime contractors performing residential home construction, "wiring" or "lighting fixtures" for use by an electrical contractor.

(ii) The buyer must remit retail sales tax on any taxable product

or service not listed on the resale certificate provided to the seller. If the buyer gave a resale certificate to the seller and later used an item listed on the certificate, or if the seller failed to collect the sales tax on items not listed on the certificate, the buyer must remit the deferred sales or use tax due directly to the department.

(iii) RCW 82.08.050 provides that each seller shall collect from the buyer the full amount of retail sales tax due on each retail sale. If the department finds that the seller has engaged in a consistent pattern of failing to properly charge sales tax on items not purchased at wholesale (i.e., not listed on the resale certificate), it may hold the seller liable for the uncollected sales tax.

(iv) Persons having specific questions regarding the use of terms to describe products or services purchased at wholesale may submit their questions to the department for ruling. The department may be contacted on the internet at <http://dor.wa.gov/> or by writing:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

(b) **Blanket resale certificates.** A buyer who will purchase at wholesale all of the products or services being purchased from a particular seller will not be required to specifically describe the items or item categories on the resale certificate. If the certificate form provides for a description of the products or services being purchased at wholesale the buyer may specify "all products and/or services" (or make a similar designation). A resale certificate completed in this manner is often described as a blanket resale certificate.

(i) The resale certificate used by the buyer must, in all cases, be completed in its entirety. A resale certificate in which the section for the description of the items being purchased at wholesale is left blank by the buyer will not be considered a properly executed resale certificate.

(ii) As of July 1, 2008, renewal or updating of blanket resale certificates is not required as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

To effectively administer this provision during an audit, the department will accept a resale certificate as evidence for wholesale sales that occur within four years of the certificate's effective date without evidence of sales transactions being made once every twelve months. For sales transactions made more than four years after the date of the properly completed resale certificate, the seller must substantiate that a recurring business relationship with the buyer has occurred for any sales outside the period of more than

four years after the effective date of the resale certificate.

(c) **Resale certificates for single transactions.** If the resale certificate is used for a single transaction, the language and information required of a resale certificate may be written or stamped upon a purchase order or invoice. The language contained in a "single use" resale certificate should be modified to delete any reference to subsequent orders or purchases.

(d) **Examples.** The following examples explain the proper use of types of resale certificates in typical situations. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) ABC is an automobile repair shop purchasing automobile parts for resale and tools for its own use from DE Supply. ABC must provide DE Supply with a resale certificate limiting the certificate's application to automobile part purchases. However, should ABC withdraw parts from inventory to install in its own tow truck, deferred retail sales tax or use tax must be remitted directly to the department. The buyer has the responsibility to report deferred retail sales tax or use tax upon any item put to its own use, including items for which it gave a resale certificate and later used for its own use.

(ii) X Company is a retailer selling lumber, hardware, tools, automotive parts, and household appliances. X Company regularly purchases lumber, hardware, and tools from Z Distributing. While these products are generally purchased for resale, X Company occasionally withdraws some of these products from inventory for its own use. X Company may provide Z Distributing with a resale certificate specifying "all products purchased" are purchased at wholesale. However, whenever X Company removes any product from inventory to put to its own use, deferred retail sales tax or use tax must be remitted to the department.

(iii) TM Company is a manufacturer of electric motors. When making purchases from its suppliers, TM issues a paper purchase order. This purchase order contains the information required of a resale certificate and a signature of the person ordering the items on behalf of TM. This purchase order includes a box that, if marked, indicates to the supplier that all or certain designated items purchased are being purchased at wholesale.

When the box indicating the purchases are being made at wholesale is marked, the purchase order can be accepted as a resale certificate. As TM Company's purchase orders are being accepted as resale certificates, they must be retained by the seller for at least five years. (See WAC 458-20-254 Recordkeeping.)

(8) **Other documentary evidence.** Other documentary evidence may be used by the seller and buyer in lieu of the resale certificate form described in this section. However, this documentary evidence must collectively contain the information and language generally required of a resale certificate. The conditions and restrictions

applicable to the use of resale certificates apply equally to other documentary evidence used in lieu of the resale certificate form in this section. The following are examples of documentary evidence that will be accepted to show that sales were at wholesale:

(a) **Combination of documentary evidence.** A combination of documentation kept on file, such as a membership card or application, and a sales invoice or "certificate" taken at the point of sale with the purchases listed, provided:

(i) The documentation kept on file contains all information required on a resale certificate, including, for paper certificates, the names and signatures of all persons authorized to make purchases at wholesale; and

(ii) The sales invoice or "certificate" taken at the point of sale must contain the following:

(A) Language certifying the purchase is made at wholesale, with acknowledgment of the penalties for the misuse of resale certificate privileges, as generally required of a resale certificate; and

(B) The name and registration number of the buyer/business, and, if a paper certificate, an authorized signature.

(b) **Contracts of sale.** A contract of sale that within the body of the contract provides the language and information generally required of a resale certificate. The contract of sale must specify the products or services subject to the resale certificate privileges.

(c) **Other preapproved documentary evidence.** Any other documentary evidence that has been approved in advance and in writing by the department.

(9) **Sales to nonresident buyers.** If the buyer is a nonresident who is not engaged in business in this state, but buys articles here for the purpose of resale in the regular course of business outside this state, the seller must take from the buyer a resale certificate as described in this section. The seller may accept a resale certificate from an unregistered nonresident buyer with the registration number information omitted, provided the balance of the resale certificate is completed in its entirety. The resale certificate should contain a statement that the items are being purchased for resale outside Washington.

(10) **Sales to farmers.** Farmers selling agricultural products only at wholesale are not required to register with the department. (See WAC 458-20-101 Tax registration and tax reporting.) When making wholesale sales to farmers (including farmers operating in other states), the seller must take from the farmer a resale certificate as described in this section. Farmers not required to be registered with the department may provide, and the seller may accept, resale certificates with the registration number information omitted, provided the balance of the certificates are completed in full. Persons making sales to farmers should also refer to WAC 458-20-210 (Sales of tangible personal property for farming--Sales of agricultural products by farmers).

(11) **Purchases for dual purposes.** A buyer normally engaged in both consuming and reselling certain types of tangible personal property, and not able to determine at the time of purchase whether the particular property purchased will be consumed or resold, must purchase according to the general nature of his or her business. RCW 82.08.130. If the buyer principally consumes the articles in question, the buyer should not give a resale certificate for any part of the purchase. If the buyer principally resells the articles, the buyer may issue a resale certificate for the entire purchase. For the purposes of this subsection, the term "principally" means greater than fifty percent.

(a) **Deferred sales tax liability.** If the buyer gives a resale certificate for all purchases and thereafter consumes some of the articles purchased, the buyer must set up in his or her books of account the value of the article used and remit to the department the applicable deferred sales tax. The deferred sales tax liability should be reported under the use tax classification on the buyer's excise tax return.

(i) Buyers making purchases for dual purposes under the provisions of a resale certificate must remit deferred sales tax on all products or services they consume. If the buyer fails to make a good faith effort to remit this tax liability, the penalty for the misuse of resale certificate privileges may be assessed. This penalty will apply to the unremitted portion of the deferred sales tax liability.

A buyer will generally be considered to be making a good faith effort to report its deferred sales tax liability if the buyer discovers a minimum of eighty percent of the tax liability within one hundred twenty days of purchase, and remits the full amount of the discovered tax liability upon the next excise tax return. However, if the buyer does not satisfy this eighty percent threshold and can show by other facts and circumstances that it made a good faith effort to report the tax liability, the penalty will not be assessed. Likewise, if the department can show by other facts and circumstances that the buyer did not make a good faith effort in remitting its tax liability the penalty will be assessed, even if the eighty percent threshold is satisfied.

(ii) The following example illustrates the use of a resale certificate for dual-use purchases. This example should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances. BC Contracting operates both as a prime contractor and speculative builder of residential homes. BC Contracting purchases building materials from Seller D that are principally incorporated into projects upon which BC acts as a prime contractor. BC provides Seller D with a resale certificate and purchases all building materials at wholesale. BC must remit deferred sales tax upon all building materials incorporated into the speculative projects to be considered to be properly using its resale certificate privileges.

The failure to make a good faith effort to identify and remit this tax liability may result in the assessment of the fifty percent penalty for the misuse of resale certificate privileges.

(b) **Tax paid at source deduction.** If the buyer has not given a resale certificate, but has paid retail sales tax on all articles of tangible personal property and subsequently resells a portion of the articles, the buyer must collect the retail sales tax from its retail customers as provided by law. When reporting these sales on the excise tax return, the buyer may then claim a deduction in the amount the buyer paid for the property resold.

(i) This deduction may be claimed under the retail sales tax classification only. It must be identified as a "taxable amount for tax paid at source" deduction on the deduction detail worksheet, which must be filed with the excise tax return. Failure to properly identify the deduction may result in the disallowance of the deduction. When completing the local sales tax portion of the tax return, the deduction must be computed at the local sales tax rate paid to the seller, and credited to the seller's tax location code.

(ii) The following example illustrates the tax paid at source deduction on or after July 1, 2008. This example should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances. Seller A is located in Spokane, Washington and purchases equipment parts for dual purposes from a supplier located in Seattle, Washington. The supplier ships the parts to Spokane. Seller A does not issue a resale certificate for the purchase, and remits retail sales tax to the supplier at the Spokane tax rate. A portion of these parts are sold and shipped to Customer B in Kennewick, with retail sales tax collected at the Kennewick tax rate. Seller A must report the amount of the sale to Customer B on its excise tax return, compute the local sales tax liability at the Kennewick rate, and code this liability to the location code for Kennewick (0302). Seller A would claim the tax paid at source deduction for the cost of the parts resold to Customer B, compute the local sales tax credit at the Spokane rate, and code this deduction amount to the location code for Spokane (3210).

(iii) Claim for deduction will be allowed only if the taxpayer keeps and preserves records in support of the deduction that show the names of the persons from whom such articles were purchased, the date of the purchase, the type of articles, the amount of the purchase and the amount of tax that was paid.

(iv) Should the buyer resell the articles at wholesale, or under other situations where retail sales tax is not to be collected, the claim for the tax paid at source deduction on a particular excise tax return may result in a credit. In such cases, the department will issue a credit notice that may be used against future tax liabilities. However, a taxpayer may request in writing a refund from the department.

(12) **Waiver of penalty for resale certificate misuse.** The

department may waive the penalty imposed for resale certificate misuse upon finding that the use of the certificate to purchase items or services by a person not entitled to use the certificate for that purpose was due to circumstances beyond the control of the buyer. However, the use of a resale certificate to purchase items or services for personal use outside of the business does not qualify for the waiver or cancellation of the penalty. The penalty will not be waived merely because the buyer was not aware of either the proper use of the resale certificate or the penalty. In all cases the burden of proving the facts is upon the buyer.

(a) **Considerations for waiver.** Situations under which a waiver of the penalty will be considered by the department include, but are not necessarily limited to, the following:

(i) The resale certificate was properly used to purchase products or services for dual purposes; or the buyer was eligible to issue the resale certificate; and the buyer made a good faith effort to discover all of its deferred sales tax liability within one hundred twenty days of purchase; and the buyer remitted the discovered tax liability upon the next excise tax return. (Refer to subsection (11)(a)(i) of this section for an explanation of what constitutes "good faith effort.")

(ii) The certificate was issued and/or purchases were made without the knowledge of the buyer, and had no connection with the buyer's business activities. However, the penalty for the misuse of resale certificate privileges may be applied to the person actually issuing and/or using the resale certificate without knowledge of the buyer.

(b) **One time waiver of penalty for inadvertent or unintentional resale certificate misuse.** The penalty prescribed for the misuse of the resale certificate may be waived or canceled on a one time only basis if such misuse was inadvertent or unintentional, and the item was purchased for use within the business. If the department does grant a one time waiver of the penalty, the buyer will be provided written notification at that time.

(c) **Examples.** The following are examples of typical situations where the fifty percent penalty for the misuse of resale privileges will or will not be assessed. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) ABC Manufacturing purchases electrical wiring and tools from X Supply. The electrical wiring is purchased for dual purposes, i.e., for resale and for consumption, with more than fifty percent of the wiring purchases becoming a component of items that ABC manufactures for sale. ABC Manufacturing issues a resale certificate to X Supply specifying "electrical wiring" as the category of items purchased for resale. ABC regularly reviews its purchases and remits deferred sales tax upon the wiring it uses as a consumer.

ABC is subsequently audited by the department and it is

discovered that ABC Manufacturing failed to remit deferred sales tax upon three purchases of wiring for consumption. The unreported tax liability attributable to these three purchases is less than five percent of the total deferred sales tax liability for wiring purchases made from X Supply. It is also determined that the failure to remit deferred sales tax upon these purchases was merely an oversight. The fifty percent penalty for the misuse of resale certificate privileges does not apply, even though ABC failed to remit deferred sales tax on these purchases. The resale certificate was properly issued, and ABC remitted to the department more than eighty percent of the deferred sales tax liability for wiring purchases from X Supply.

(ii) During a routine audit examination of a jewelry store, the department discovers that a dentist has provided a resale certificate for the purchase of a necklace. This resale certificate indicates that in addition to operating a dentistry practice, the dentist also sells jewelry. The resale certificate contains the information required under RCW 82.04.470.

Upon further investigation, the department finds that the dentist is not engaged in selling jewelry. The department will look to the dentist for payment of the applicable retail sales tax. In addition, the dentist will be assessed the fifty percent penalty for the misuse of resale certificate privileges. The penalty will not be waived or canceled as the dentist misused the resale certificate privileges to purchase a necklace for personal use.

(iii) During a routine audit examination of a computer dealer, it is discovered that a resale certificate was obtained from a bookkeeping service. The resale certificate was completed in its entirety and accepted by the dealer. Upon further investigation it is discovered that the bookkeeping service had no knowledge of the resale certificate, and had made no payment to the computer dealer. The employee who signed the resale certificate had purchased the computer for personal use, and had personally made payment to the computer dealer.

The fifty percent penalty for the misuse of the resale certificate privileges will be waived for the bookkeeping service. The bookkeeping service had no knowledge of the purchase or unauthorized use of the resale certificate. However, the department will look to the employee for payment of the taxes and the fifty percent penalty for the misuse of resale certificate privileges.

(iv) During an audit examination it is discovered that XYZ Corporation, a duplicating company, purchased copying equipment for its own use. XYZ Corporation issued a resale certificate to the seller despite the fact that XYZ does not sell copying equipment. XYZ also failed to remit either the deferred sales or use tax to the department. As a result of a previous investigation by the department, XYZ had been informed in writing that retail sales and/or use tax applied to all such purchases. The fifty percent penalty for the misuse of resale certificate privileges will be assessed.

XYZ was not eligible to provide a resale certificate for the purchase of copying equipment, and had previously been so informed. The penalty will apply to the unremitted deferred sales tax liability.

(v) AZ Construction issued a resale certificate to a building material supplier for the purchase of "pins" and "loads." The "pins" are fasteners that become a component part of the finished structure. The "load" is a powder charge that is used to drive the "pin" into the materials being fastened together. AZ Construction is informed during the course of an audit examination that it is considered the consumer of the "loads" and may not issue a resale certificate for its purchase thereof. AZ Construction indicates that it was unaware that a resale certificate could not be issued for the purchase of "loads," and there is no indication that AZ Construction had previously been so informed.

The failure to be aware of the proper use of the resale certificate is not generally grounds for waiving the fifty percent penalty for the misuse of resale certificate privileges. However, AZ Construction does qualify for the "one time only" waiver of the penalty as the misuse of the resale certificate privilege was unintentional and the "loads" were purchased for use within the business.

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