



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)
Do NOT use for expedited rule making

Agency: Department of Revenue

- Preproposal Statement of Inquiry was filed as WSR 15-14-081; or
- Expedited Rule Making--Proposed notice was filed as WSR; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

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

Title of rule and other identifying information: WAC 458-20-10201 (Rule 10201) *Application process and eligibility requirements for reseller permits*. Rule 10201 explains the application process and eligibility requirements for businesses to receive Department-issued reseller permits.

Hearing location(s):

Capitol Plaza Building
Fourth Floor – Executive Conference Room
1025 Union Avenue SE
Olympia, Washington

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

Call in option can be provided upon request no later than 3 days before the hearing date.

Date: October 7, 2015 Time: 10:00 AM.

Date of intended adoption: October 14, 2015

(Note: This is NOT the effective date)

Submit written comments to:

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Post Office Box 47453
Olympia, Washington 98504-7453
E-mail: GayleC@dor.wa.gov
By: October 7, 2015

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:

The Department is proposing to revise Rule 10201 to update it by removing past statute information. In addition, a criteria has been added to (203)(b) and (303)(b) as a consideration for deciding whether a business will be issued a reseller permit by the Department. Part I *General Information* has been expanded to include the definitions that are currently spread throughout the rule. Headings, as needed for subsections, and examples have been added.

Reasons supporting proposal: Removal of past statute information.

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

Statute being implemented:

Is rule necessary because of a:

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

DATE September 1, 2015

NAME
Kevin Dixon

SIGNATURE

TITLE
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 01, 2015

TIME: 11:23 AM

WSR 15-18-104

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
Implementation.... Marcus Gasper	1025 Union Ave. SE. Ste #500, Olympia ,WA	(360) 534-1615
Enforcement..... Marcus Gasper	1025 Union Ave. SE. Ste #500, Olympia ,WA	(360) 534-1615

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone

fax

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

fax

e-mail

No: Please explain:

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

AMENDATORY SECTION (Amending WSR 10-14-080, filed 7/1/10, effective 8/1/10)

WAC 458-20-10201 Application process and eligibility requirements for reseller permits.

~~((Part I -- General~~

~~(101))~~ (1) Introduction. ~~((Effective January 1, 2010,))~~ Reseller permits, issued by the department of revenue (department) ~~((replace)),~~ replaced resale certificates as the documentation necessary to substantiate the wholesale nature of a sales transaction effective January 1, 2010. ~~((Unique requirements and provisions apply to construction contractors. (See Part III of this section.) This section))~~ This rule explains the criteria under which the department will automatically issue a reseller permit, the application process for both contractors and taxpayers engaging in other business activities when the department does not automatically issue or renew a reseller permit, and the criteria that may result in the denial of an application for a reseller permit. Unique requirements and provisions apply to contractors. (See Part III of this rule.)

The information in this rule is organized into the following three parts:

- (a) Part I: General Information.
- (b) Part II: Businesses Other than Contractors.
- (c) Part III: Contractors.

(2) Other rules that may apply. Readers may want to refer to other rules for additional information, including those in the following list:

(a) WAC 458-20-102, which explains taxpayers' responsibilities regarding the use of reseller permits, sellers' responsibilities for retaining copies of reseller permits, and the implications for taxpayers not properly using reseller permits and sellers not obtaining copies of reseller permits from taxpayers; and

(b) WAC 458-20-10202, which explains the process a taxpayer must use to appeal the department's denial of an application for a reseller permit.

(3) Examples. This rule contains examples that 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 the facts and circumstances.

Part I - General Information

(101) Definitions. For the purpose of this rule, the following terms will apply:

(a) Consumer. "Consumer" has the same meaning as under RCW 82.04.190.

(b) Contractor. A "contractor" is a person whose primary business activity is as a contractor as defined under RCW 18.27.010 or an electrical contractor as defined under RCW 19.28.006.

(c) Gross income. "Gross income" means gross proceeds of sales as defined in RCW 82.04.070 and value of products manufactured as determined under RCW 82.04.450.

(d) Labor. "Labor" is defined as the work of subcontractors (including personnel provided by temporary staffing companies) hired by a contractor to perform a portion of the construction services in respect to real property owned by a third party. In the case of specula-

tive builders, labor includes the work of any contractor hired by the speculative builder. Labor does not include the work of taxpayer's employees. Nor does the term include architects, consultants, engineers, construction managers, or other independent contractors hired to oversee a project but who are not responsible for the construction of the project. However, for purposes of the percentage discussed in subsection (303)(a)(iii) of this rule, purchases of labor may include the wages of taxpayer's employees and amounts paid to consultants, engineers, construction managers or other independent contractors hired to oversee a project if all such purchases are commingled in the applicant's records and it would be impractical to exclude such purchases.

(e) **Materials.** "Materials" is defined as tangible personal property that becomes incorporated into the real property being constructed, repaired, decorated, or improved. Materials are the type of tangible personal property that contractors on retail construction projects purchase at wholesale, such as lumber, concrete, paint, wiring, pipe, roofing materials, insulation, nails, screws, drywall, and flooring material. Materials do not include consumable supplies, tools, or equipment, whether purchased or rented, such as bulldozers. However, for purposes of the percentage discussed in subsection (303)(a)(iii) of this rule, purchases of consumable supplies, tools, and equipment rentals may be included with material purchases if all such purchases are commingled in the applicant's records and it would be impractical to exclude such purchases.

(f) **Material misstatement.** "Material misstatement" is a false statement knowingly or purposefully made by the applicant with the intent to deceive or mislead the department.

(g) **Reseller permit.** A "reseller permit" is the document issued to a taxpayer by the department, a copy of which the taxpayer provides to a seller to substantiate a wholesale purchase. A wholesale purchase is not subject to retail sales tax. RCW 82.04.060; 82.08.020.

(h) **Retail construction activity.** "Retail construction activity" means the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, on, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and it also includes the sale of services or charges made for the clearing of land and the moving of earth except the mere leveling of land used in commercial farming or agriculture. Retail construction activity generally involves residential and commercial construction performed for others, including road construction for the state of Washington. It generally includes construction activities that are not specifically designated as speculative building, government contracting, public road construction, logging road construction, radioactive waste cleanup on federal lands, or designated hazardous site clean-up jobs.

(i) **Wholesale construction activity.** "Wholesale construction activity" means labor and services rendered for persons who are not consumers in respect to real property, if such labor and services are expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers.

(102) (~~What is a reseller permit?~~ A reseller permit is the document issued to a taxpayer by the department, a copy of which the taxpayer provides to a seller to substantiate a wholesale purchase. A wholesale purchase is not subject to retail sales tax. See RCW

~~82.04.060; 82.08.020. Reseller permits are to be used for wholesale purchases made on and after January 1, 2010.~~

~~(103)) Can any business obtain a reseller permit? No. ((This act was passed by the legislature)) The legislature passed the act authorizing reseller permits to address the significant retail sales tax noncompliance problem resulting from both the intentional and unintentional misuse of resale certificates. The department will not issue a reseller permit unless the business ((can)) substantiates that ((the business)) it is entitled to make wholesale purchases. Some businesses may not receive a reseller permit, and if they ((do)) make wholesale purchases, they will need to pay retail sales tax to the seller and then claim a "taxable amount for tax paid at source" deduction on their excise tax return or request a refund from the department as discussed in subsection (205) of this ((section)) rule.~~

~~((In addition to this section, information regarding the reseller permit is available at the following sources:~~

- ~~• <http://dor.wa.gov>, which is the department's web site;~~
- ~~• WAC 458-20-10202, which explains the process a taxpayer uses when appealing the department's denial of an application for a reseller permit; and~~
- ~~• WAC 458-20-102, which explains the taxpayer's responsibilities regarding the use of a reseller permit, the seller's responsibility for retaining a copy of a reseller permit, and the implications for a taxpayer not properly using a reseller permit and a seller not obtaining a copy of a reseller permit from the taxpayer.~~

~~Buyers and sellers should refer to the following for information regarding the resale certificate, which is the document used to substantiate the wholesale nature of a sales transaction occurring before January 1, 2010:~~

- ~~• WAC 458-20-102A (Resale certificates), which explains the taxpayer's responsibilities regarding the use of a resale certificate, the seller's responsibility for retaining a resale certificate, and the implications for a taxpayer not properly using a certificate and a seller not obtaining a certificate from the taxpayer. It is important to note that sellers should retain resale certificates for five years from the date of last use (e.g., December 31, 2014, for sales made in 2009) as the certificates may be requested by the department to verify the wholesale nature of a sale made before January 1, 2010.)~~ **Example 1.** BC Interior Design (BC) arranges for its customers to order and pay for furniture, window treatments and other decorative items directly from vendors. As the customers purchase directly from the vendors, and BC does not purchase the items for resale to their customers, BC may not qualify for a reseller permit. BC must meet the criteria as discussed in subsection (203) of this rule, which includes reporting income from retailing, wholesaling, or manufacturing activities.

Part II - Businesses Other than Contractors

(201) How does a business obtain a reseller permit? The department will automatically issue a reseller permit to a business if it appears to the department's satisfaction, based on the nature of the business's activities and any other information available to the department, that the business is entitled to make purchases at wholesale.

Those businesses that do not receive an automatically issued reseller permit may apply to the department to obtain a reseller permit. Applications ((are available at: <http://dor.wa.gov> or)) can be filed using the businesses' "My Account." If a paper application is needed,

businesses can obtain one by calling 1-800-647-7706 (taxpayer services) or 360-902-7137 (taxpayer account administration). Completed paper applications should be mailed or faxed to the department at:

Taxpayer Account Administration
Department of Revenue
~~((Taxpayer Account Administration))~~
P.O. Box 47476
Olympia, WA 98504-7476
Fax: 360-705-6733

(202) When does a business apply for a reseller permit? A business ~~((can))~~ may apply for a reseller permit at any time.

(203) What criteria will the department consider when ~~((making its decision))~~ deciding whether a business will receive a reseller permit?

(a) Except as provided in (b) of this subsection, a business other than a contractor will receive a reseller permit if it satisfies the following criteria (contractors should refer to subsection ~~((305))~~ (303) of this ~~((section))~~ rule for an explanation of the requirements unique to them):

(i) The business has an active tax reporting account with the department;

(ii) The business ~~((must have))~~ has reported gross income on its excise tax returns covering a monthly or quarterly period during the immediately preceding six months or, if the business reports on an annual basis, on the immediately preceding annual excise tax return; and

(iii) Five percent or more of the business's gross income reported during the applicable six- or twelve-month period described in (a)(ii) of this subsection was reported under a retailing, wholesaling, or manufacturing business and occupation (B&O) tax classification.

(b) Notwithstanding (a) of this subsection, the department may deny an application for a reseller permit if:

(i) The department determines that an applicant is not entitled to make purchases at wholesale or is otherwise prohibited from using a reseller permit based on the nature of the applicant's business;

(ii) The applicant has been assessed the penalty for the misuse of a resale certificate or a reseller permit;

(iii) The application contains any material misstatement;

(iv) The application is incomplete; ~~((or))~~

(v) The applicant has an outstanding tax liability due to the department; or

(vi) The department determines that denial of the application is in the best interest of collecting the taxes due under Title 82 RCW.

(c) The department's decision to approve or deny an application may be based on excise tax returns previously filed with the department by the applicant, a current or previous examination of the applicant's books and records by the department, information provided by the applicant in the master application and the reseller permit application, and other information available to the department.

(d) ~~((For purposes of this subsection, "gross income" means gross proceeds of sales as defined in RCW 82.04.070 and value of products manufactured as determined under RCW 82.04.450.~~

~~((e) For purposes of this subsection and subsection (305) of this section, a "material misstatement" is a false statement knowingly or purposefully made by the applicant with the intent to deceive or mislead the department.~~

~~(f)~~) In the event that a business has reorganized, the new business resulting from the reorganization may be denied a reseller permit if the former business would not have qualified for a reseller permit under (a) or (b) of this subsection. For purposes of this subsection, "reorganize" means:

(i) The transfer, however effected, 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 effected; 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.

(204) What if I am a new business and don't have a past reporting history? New businesses will generally be issued permits if they indicate they will engage in activity taxable under a retailing, wholesaling, or manufacturing B&O tax classification.

(205) What if I don't get a reseller permit and some of my purchases (~~do~~) qualify as wholesale purchases? ~~((It is possible that))~~ Some taxpayers that do not qualify for a reseller permit ~~((will))~~ make occasional wholesale purchases. In these circumstances, the taxpayer must pay retail sales tax on these purchases and then claim a "taxable amount for tax paid at source" deduction on ~~((the taxpayer's))~~ its excise tax return. However, such a deduction in respect to the purchase of services is not permitted if the services are not of a type that can be sold at wholesale under the definition of wholesale sale in RCW 82.04.060.

Alternatively, the taxpayer may request a refund from the department of retail sales tax it paid on purchases that are later resold without being used (intervening use) by the taxpayer or for purchases that would otherwise have met the definition of wholesale sale if the taxpayer had provided the seller with a reseller permit or uniform exemption certificate as authorized in RCW 82.04.470. ~~((See also WAC 458-20-229 (Refunds). However, such a deduction in respect to the purchase of services is not permitted if the services are not of a type that can be sold at wholesale under the definition of wholesale sale in RCW 82.04.060))~~ For instructions on requesting a refund see WAC 458-20-229.

Part III - ~~((Construction))~~ Contractors

(301) How does a contractor obtain a reseller permit? The department will automatically issue a reseller permit to a contractor if the department is satisfied that the contractor is entitled to make purchases at wholesale and that issuing the reseller permit is unlikely to jeopardize collection of sales taxes due based on the criteria discussed in subsection ~~((305))~~ (303) of this ~~((section))~~ rule.

~~((Those businesses))~~ Contractors that do not receive an automatically issued reseller permit may apply to the department to obtain a reseller permit in the same manner as provided in subsection (201) of this ~~((section))~~ rule. However, the application identifies information specific to contractors that must be provided.

(302) ~~((How do I determine whether I am a "contractor"?)~~ For purposes of the reseller permit:

Under no circumstances is this proposed rule to be used to determine tax liability and/or exemptions.

(a) A "contractor" is a person whose primary business activity is as a contractor as defined under RCW 18.27.010 or an electrical contractor as defined under RCW 19.28.006.

(b) "Retail construction activity" means the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and it also includes the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture. Retail construction activity generally involves residential and commercial construction performed for others, including road construction for the state of Washington. It generally includes construction activities that are not specifically designated as speculative building, government contracting, public road construction, logging road construction, radioactive waste clean-up on federal lands, or designated hazardous site clean up jobs.

(c) "Wholesale construction activity" means labor and services rendered for persons who are not consumers in respect to real property, if such labor and services are expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers. For purposes of this subsection, "consumer" has the same meaning under RCW 82.04.190.

(d) "Materials" is defined as tangible personal property that becomes incorporated into the real property being constructed, repaired, decorated, or improved. Materials are the type of tangible personal property that contractors on retail construction projects purchase at wholesale, such as lumber, concrete, paint, wiring, pipe, roofing materials, insulation, nails, screws, drywall, and flooring material. Materials do not include consumable supplies, tools, or equipment, whether purchased or rented, such as bulldozers. However, for purposes of the percentage discussed in subsection (305)(a)(iii) of this section, purchases of consumable supplies, tools, and equipment rentals may be included with material purchases if all such purchases are commingled in the applicant's records and it would be impractical to exclude such purchases.

(e) "Labor" is defined as the work of subcontractors (including personnel provided by temporary staffing companies) hired by a contractor to perform a portion of the construction services in respect to real property owned by a third party. In the case of speculative builders, labor includes the work of any construction contractor hired by the speculative builder. Labor does not include the work of taxpayer's employees. Nor does the term include consultants, engineers, construction managers, or other independent contractors hired to oversee a project. However, for purposes of the percentage discussed in subsection (305)(a)(iii) of this section, purchases of labor may include the wages of taxpayer's employees and amounts paid to consultants, engineers, construction managers or other independent contractors hired to oversee a project if all such purchases are commingled in the applicant's records and it would be impractical to exclude such purchases.

(303) How does a contractor apply for a reseller permit? A contractor applies for a reseller permit in the same manner as businesses apply as provided in subsection (201) of this section. However, the application identifies information specific to contractors that must be provided.

~~(304))~~ **When does a contractor apply for a reseller permit?** The same guidelines for business applicants as provided in subsection (202) of this ~~((section))~~ rule also apply to contractor applicants.

~~((305))~~ **(303) What are the criteria specific to contractors to receive a reseller permit?**

(a) The department may issue a permit to a contractor that:

(i) Provides a completed application with no material misstatement as that term is defined in ~~((subsection (203)(e) of this section))~~ this rule;

(ii) Demonstrates it is entitled to make purchases at wholesale; and

(iii) Reported on its application ~~((+~~

~~(A) Filed July 1, 2010, and after that))~~ at least twenty-five percent of its total dollar amount of material and labor purchases in the preceding twenty-four months were for retail and wholesale construction activities performed by the contractor ~~((+~~

~~(B) Filed from January 1, 2010, through June 30, 2010, that at least twenty five percent of its total dollar amount of material and labor purchases in the preceding twelve months were for retail construction activities)).~~

The department may ~~((, however,))~~ approve an application not meeting ~~((this criterion))~~ these criteria if the department is satisfied that approval is unlikely to jeopardize collection of the taxes due under Title 82 RCW.

(b) If the criteria in (a) of this subsection are satisfied, the department will then consider the following factors ~~((when determining))~~ to determine whether to issue a reseller permit to a contractor:

(i) Whether the contractor has an active tax reporting account with the department;

(ii) Whether the contractor has reported gross income on its excise tax returns covering a monthly or quarterly period during the immediately preceding six months or, if the contractor reports on an annual basis, on the immediately preceding annual excise tax return;

(iii) Whether the contractor has the appropriate certification and licensing with the Washington state department of labor and industries;

(iv) Whether the contractor has been assessed the penalty for the misuse of a resale certificate or a reseller permit; ~~((and))~~

(v) Whether the contractor has an outstanding tax liability due to the department; and

(vi) Any other factor resulting in a determination by the department that denial of the contractor's application is in the best interest of collecting the taxes due under Title 82 RCW.

(c) The department's decision to approve or deny an application may be based on the same materials and information as discussed in subsection (203)(c) of this ~~((section))~~ rule.

~~(d) ((For purposes of this subsection, "gross income" means gross proceeds of sales as defined in RCW 82.04.070 and value of products manufactured as determined under RCW 82.04.450.~~

~~(e))~~ The provisions of subsection (203) ~~((+f))~~ (d) of this ~~((section are equally applicable))~~ rule apply equally to contractors.

~~((306))~~ **Example 2.** DC Contracting is a speculative homebuilder and also purchases houses to renovate and sell, sometimes referred to as flipping. A speculative builder is the consumer of all materials incorporated into the real estate including houses purchased for flipping. Retail sales tax is owed on all supplies and services DC Con-

Under no circumstances is this proposed rule to be used to determine tax liability and/or exemptions.

contracting purchases, unless there is an applicable exemption. DC Contracting would not qualify for a reseller permit under these facts.

(304) What if a contractor does not obtain a reseller permit and some of its purchases do qualify as wholesale purchases? The provisions of subsection (205) of this (~~section are~~) rule apply equally (~~applicable~~) to contractors.

DRAFT