



EXPEDITED RULE MAKING

CR-105 (June 2004)
(Implements RCW 34.05.353)
EXPEDITED RULE MAKING ONLY

Agency: Department of Revenue

Title of rule and other identifying information: WAC 458-20-103 (Rule 103) *Time and place of sale* provides the definition of “sale” when sales of tangible personal property occur in Washington, as well as performance of services, and use of gift certificates.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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

The Department is proposing to update the definition of “sale” in Rule 103 to match the language in RCW 82.04.040, and make other revisions to comply with the Streamlined Sales and Use Tax Agreement. A list of other rules that may be relevant to the reader has also been added.

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

Reasons supporting proposal: RCW 82.04.040 and 82.32.730.

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

Statute being implemented:
RCW 82.04.040

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 16, 2016
TIME: 9:12 AM
WSR 16-05-077

Date
February 16, 2016

Name
Kevin Dixon

Signature

Title
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Name of proponent: Department of Revenue

- Private
- Public
- Governmental

Name of agency personnel responsible for:

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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.

AMENDATORY SECTION (Amending WSR 82-12-021, filed 5/25/82)

WAC 458-20-103 Time and place of sale. (1) Introduction. Under the Revenue Act of 1935, as amended, the word "sale" means any transfer of the ownership of, title to, or possession of ~~((7))~~ property for a valuable consideration ~~((7))~~ and includes ~~((the sale or charge made for performing certain services.))~~ any activity classified as a "sale at retail" or "retail sale" under RCW 82.04.050. It includes lease or rental, conditional sale contracts, and any contract under which possession of the property is given to the purchaser but title is retained by the seller as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed on the premises or not. RCW 82.04.040.

(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 458-20-108 Selling price—Credit card service fees, foreign currency, discounts, patronage dividends.

(b) WAC 458-20-145 Local sales and use tax.

(c) WAC 458-20-15503 Digital products.

(d) WAC 458-20-193 Interstate sales of tangible personal property.

(e) WAC 458-20-211 Leases or rentals of tangible personal property, bailments.

(f) WAC 458-20-235 Effect of rate changes on prior contracts and sales agreements.

(3) Place of sale. For the purpose of determining tax liability of persons selling tangible personal property, a sale generally takes place in this state when the goods sold are ~~((delivered to the buyer))~~ received by the purchaser or the purchaser's donee, designated as such by the purchaser, in this state, irrespective of whether title to the goods passes to the ~~((buyer))~~ purchaser at a point within or without this state. For more information on the sourcing of retail sales, see RCW 82.32.730(1) and WAC 458-20-193.

~~((With respect to the charge made for performing))~~ When services ~~((which constitute sales)),~~ as defined in RCW 82.04.040 and 82.04.050, ~~((a sale takes place in this state when the services are performed herein))~~ are received by the purchaser at a business location of the seller the sale is sourced to that business location. If the service is not received by the purchaser at a business location of the seller, see RCW 82.32.730(1) for additional discussion on sourcing retail sales of services.

With respect to the charge made for renting or leasing tangible personal property, ~~((a sale takes place in this state when the property is used in this state by the lessee.))~~ see RCW 82.32.730(2) for a discussion on sourcing.

(4) Use of gift certificates. Where gift certificates are sold ~~((which))~~ that will be redeemed in merchandise, or in services ~~((which))~~ that are defined ~~((by the Revenue Act))~~ as retail sales, the sale is deemed to occur and the retail sales tax ~~((shall))~~ must be collected at the time the certificate is actually redeemed for the merchandise or services. The measure of the tax is the total selling price of the merchandise or services at the time of the redemption, including the redemption value of the certificate, or any part thereof, which is applied toward the selling price. ~~((See WAC 458-20-235~~

This rule draft is being proposed under an expedited rule-making process that does not require the agency to hold public hearings. Under no circumstances is this proposed rule to be used as a basis for determining tax liability or eligibility for a tax deduction, exemption, or credit.

~~for effect of rate changes on prior contracts and sales agreements. See also WAC 458-20-131 which deals with merchandising games, and which covers the situation where certificates or trade checks are issued which may be redeemed for services which are not retail sales, such as barber services, admissions, etc.)~~

~~Revised March 2, 1982.)~~ For additional information on the use of coupons, certificates, and discounts, see WAC 458-20-108.

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