



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 15-05-058 ; 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 458-20-108 (Rule 108) Selling price – Credit card service fees, foreign currency, discounts, patronage dividends.
WAC 458-20-278 Returned goods, defective goods – Motor vehicle lemon law.

Hearing location(s):
Capitol Plaza Building
4th Floor Exec 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: July 14, 2015 Time: 1:30 P.M.

Date of intended adoption: July 21, 2015
(Note: This is NOT the effective date)

Submit written comments to:

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By: July 14, 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 revisions to WAC 458-20-108 that currently discusses returned goods, allowances and cash discounts. The proposed revision includes the definition of “selling price” or “sales price” which was expanded by legislation. The definition was previously found in WAC 458-20-107. Information on taxability for credit card service fees, purchases with foreign currency, use of coupons and discount vouchers, patronage dividends and payments to dealers for “make-ready” services has been added. The following excise tax advisories (ETA) will be canceled upon adoption of a revised rule: ETA 3008, 3041, 3060, 3081, 3129, and 3147, as pertinent information has been incorporated in the draft. Returned goods, defective goods, and motor vehicle lemon law sales are a better fit for a separate rule and have been moved from WAC 458-20-108 to a new proposed rule, WAC 458-20-278.

Reasons supporting proposal: To update information and consolidate tax guidance currently in ETAs into Rule 108.

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 June 1, 2015

NAME
Dylan Waits

SIGNATURE

TITLE
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 01, 2015

TIME: 10:01 AM

WSR 15-12-081

(COMPLETE REVERSE SIDE)

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 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 88-01-050, filed 12/15/87)

WAC 458-20-108 ((Returned goods, allowances, cash discounts.))
Selling price—Credit card service fees, foreign currency, discounts, patronage dividends.

~~((1) When a contract of sale is made subject to cancellation at the option of one of the parties or to revision in the event the goods sold are defective or if the sale is made subject to cash or trade discount, the gross proceeds actually derived from the contract and the selling price are determined by the transaction as finally completed.~~

~~(2) **Returned goods.** When sales are made either upon approval or upon a sale or return basis, and the purchaser returns the property purchased and the entire selling price is refunded or credited to the purchaser, the seller may deduct an amount equal to the selling price from gross proceeds of sales in computing tax liability, if the amount of sales tax previously collected from the buyer has been refunded by the seller to the buyer. If the property purchased is not returned within the guaranty period as established by contract or by customs of the trade, or if the full selling price is not refunded or credited to the purchaser, a presumption is raised that the property returned is not returned goods but is an exchange or a repurchase by the vendor.~~

~~To illustrate: S sells an article for \$60.00 and credits his sales account therewith. The purchaser returns the article purchased within the guaranty period and the purchase price and the sales tax theretofore paid by the buyer is refunded or credited to him. S may deduct \$60.00 from the gross amount reported on his tax return.~~

~~(3) **Defective goods.** When bona fide refunds, credits or allowances are given within the guarantee period by a seller to a purchaser on account of defects in goods sold, the amount of such refunds, credits or allowances may be deducted by the seller in computing tax liability, if the proportionate amount of the sales tax previously collected from the buyer has been refunded by the seller.~~

~~To illustrate: S sells an article to B for \$60.00 and credits his sales account therewith. The article is later found to be defective.~~

~~(a) S gives B credit of \$50.00 on account of the defect, and also a credit of sales tax collectible on that amount. S may deduct \$50.00 from the gross amount reported in his tax returns. This is true whether or not B retains the defective article.~~

~~(b) B returns the article to S who gives B an allowance of \$50.00 on a second article of the same kind which B purchases for an additional payment of \$10.00, plus sales tax thereon. S may deduct \$50.00 from the gross amount reported in his tax returns. The sale of the second article, however, must be reported for tax purposes as a \$60.00 sale and included in the gross amount in his tax return.~~

~~(c) B returns the article to S who replaces it with a new article of the same kind free of charge, and without sales tax. S may deduct \$60.00 from the gross amount reported in his tax returns, but the \$60.00 selling price of the substituted article must be reported in the gross amount.~~

~~No deduction is allowed from the gross amount reported for tax if S in (b) and (c) of this subsection, does not credit his sales account with the selling price of the new article furnished to replace the defective one, but instead merely credits the sales account with an amount equal to the additional payment received, if any. In such case,~~

the allowance for the defect is already shown in the sales account by the reduced sales price of the new article.

(4) **Motor vehicle warranties.** In the 1987 session, the Washington legislature enacted a "lemon law" creating enforcement provisions for new motor vehicle warranties. A manufacturer which repurchases a new motor vehicle under warranty because of a defective condition is required to refund to the consumer the "collateral charges" which include retail sales tax. The refund shall be made to the consumer by the manufacturer or by the dealer for the manufacturer. The department will then credit or refund the amount of the tax so refunded.

Evidence. To receive a credit or refund, the manufacturer or dealer must provide evidence that the retail sales tax was collected by the dealer and that it was refunded to the consumer. Acceptable proof will be:

(a) A copy of the dealer invoice showing the sales tax was paid by the consumer; and

(b) A signed statement from the consumer acknowledging receipt of the refunded tax. The statement should include the consumer's name, the date, the amount of the tax refunded, and the name of the dealer or the manufacturer making the refund.

(5) **Discounts.** The selling price of a service or of an article of tangible personal property does not include the amount of bona fide discounts actually taken by the buyer and the amount of such discount may be deducted from gross proceeds of sales providing such amount has been included in the gross amount reported.

(a) Discounts are not deductible under the retail sales tax when such tax is collected upon the selling price before the discount is taken and no portion of the tax is refunded to the buyer.

(b) Discount deductions will be allowed under the extracting or manufacturing classifications only when the value of the products is determined from the gross proceeds of sales.

(c) Patronage dividends which are granted in the form of discounts in the selling price of specific articles (for example, a rebate of one cent per gallon on purchases of gasoline) are deductible. (Some types of patronage dividends are not deductible. See WAC 458-20-219.) (1) **Introduction.** This rule explains "selling price" and what is included in the selling price when discounts, coupons, rebates, or foreign currency are used. This rule also provides tax guidance for credit card service fees, patronage dividends, and payments for "make ready" services.

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

(i) WAC 458-20-107, Requirement to separately state sales tax—Advertised prices including sales tax.

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

(iii) WAC 458-20-247, Trade-ins, selling price, sellers' tax measures.

(iv) WAC 458-20-278, Returned goods, defective goods—Motor vehicle lemon law.

(b) **Examples:** Examples found in this rule identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) What is included in the "selling price"? RCW 82.08.010 states that "selling price" includes "sales price." "Sales price" means the total amount of consideration, except separately stated trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property, extended warranties, digital goods, digital codes, digital automated services, or other services or anything else defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following:

- (a) The seller's cost of the property sold;
- (b) The cost of materials used, labor or service cost, interest, losses, costs of transportation to the seller, taxes imposed on the seller, and any other expense of the seller;
- (c) Charges by the seller for any services necessary to complete the sale other than delivery and installation charges;
- (d) Delivery charges; and
- (e) Installation charges.

(3) When is third-party consideration included in the "selling price"? The "selling price" or "sales price" includes consideration received by the seller from a third party if:

(a) The seller actually receives consideration from a party other than the buyer, and the consideration is directly related to a price reduction or discount on the sale;

(b) The seller has an obligation to pass the price reduction or discount through to the buyer;

(c) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of sale of an item to the buyer; and

(d) One of the following criteria is met:

(i) The buyer presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party must reimburse any seller to whom the coupon, certificate, or documentation is presented;

(ii) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the buyer or on a coupon, certificate, or other documentation presented by the buyer; or

(iii) The buyer identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount; however, a "preferred customer" card that is available to any patron does not constitute membership in such a group. RCW 82.08.010.

(e) Example 1. The Sporting Goods Store offers a 10% discount to all members of the local credit union. Dave, the customer and credit union member, must present an identification card or other evidence of membership in the credit union to claim the 10% discount on his \$100 purchase. As the credit union reimburses The Sporting Goods Store for the discount of \$10, the store must compute sales tax on the full price of \$100. The discount of \$10 is deducted from the total price after sales tax has been added to the purchase price. The store must compute retailing business and occupation (B&O) tax on \$100.

(4) What is not included in the "selling price"? The "selling price" or "sales price" does not include:

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

(a) Discounts, including cash, term, or coupons that are not reimbursed by a third party that a seller allows a buyer to take on a sale;

(b) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property, extended warranties, digital goods, digital codes, digital automated services, or other services or anything else defined as a retail sale in RCW 82.04.050, if the amount is separately stated on the invoice, bill of sale, or similar document given to the buyer; and

(c) Any taxes legally imposed directly on the buyer that are separately stated on the invoice, bill of sale, or similar document given to the buyer. RCW 82.08.010.

(d) **Example 2.** The Good Health Club offers a 10% discount to all members of the local credit union. Jill, the club member and credit union member, must present an identification card or other evidence of membership in the credit union to claim the 10% discount on her monthly membership fee of \$50. If the credit union does not reimburse the health club for the \$5 discount, the health club absorbs the \$5 and it is not part of the taxable selling price. Thus, the club must collect sales tax on a selling price of \$45 and compute retailing B&O tax on gross proceeds of sale of \$45.

(5) **Credit card service fees.** When a seller allows a buyer to charge purchases on a credit card, the institution that issued the credit card charges a service fee to the seller. The service fee charge is a part of the seller's cost of doing business. Because the service fee is a cost of doing business, the seller may not deduct the fee when determining its B&O tax and retail sales tax liabilities. RCW 82.04.070 and 82.08.010.

(6) **Foreign currency accepted by seller.** When determining the measure of tax liability, the selling price or gross proceeds of sale must be measured in terms of the currency of the United States. If payment is accepted in foreign currency, the payment must be converted into United States currency. The effect of this conversion, whether resulting in an increase or decrease in the selling price or gross proceeds of sale, must be recognized when tax is computed.

Example 3. ABC Company (ABC) sells a sweater for \$100, plus \$8 in retail sales tax, for a total of \$108. ABC accepts payment in the form of \$108 Canadian. The exchange rate for Canadian dollars at ABC's bank is 0.95 Canadian to 1 U.S. dollars at the time of the sales transaction. In terms of U.S. currency, ABC has actually accepted a payment of \$102.60 (108 Canadian x 0.95). The selling price or gross proceeds of sale for determining the measure of tax liability is \$95 (\$102.60 less \$7.60 retail sales tax).

(7) **Bona fide discounts.** When a sale is made subject to cash or trade discount, the gross proceeds actually derived from the selling price are determined by the transaction as finally completed. A sale is made subject to a discount when the sales price is reduced under terms known to the buyer and seller at the time of the sale, and the price reduction occurs at the time of the sale or within a time agreed and understood by the parties at the time of the sale.

The selling price or sales price of a service or article of tangible personal property does not include bona fide discounts actually taken by the buyer. The amount of bona fide discounts may be deducted only if the amount has been included in the gross amount reported.

Discounts are not deductible when the retail sales tax is based on the selling price or sales price before the discount is taken and no portion of the tax is refunded to the buyer.

(a) **Discount vouchers.** A discount voucher is an instrument redeemed by a customer from a seller at the time of purchase that:

• Is obtained by the customer from a discount voucher provider that has an agreement with the seller, and the seller determined the price of the voucher sold;

• Allows the customer to acquire the voucher for less than its face value;

• Is redeemable either for a specific good or service (product) or for a certain dollar amount towards the sales price of any product sold by the seller; and

• The seller, at the time of redemption, knows the amount paid by the customer for the voucher.

For additional information that may apply see subsection (3) of this rule.

(i) **Taxes apply on the redemption of a discount voucher.**

(A) The purchase of a discount voucher prior to redemption is not taxable.

(B) The seller of a product or products purchased using a discount voucher must include the amount the customer paid for the discount voucher in the gross proceeds of sales or gross income of the business, as the case may be.

(C) If a discount voucher is redeemed by a customer for a product subject to retail sales tax, then the amount paid by the customer is included in the taxable sales price of the product.

(D) The seller may not deduct advertising or similar expenses (fees) paid to the discount voucher provider, even if the discount voucher provider "nets out" those expenses (fees) before remitting the payment to the seller.

(ii) **Determining the amount paid by the customer for the discount voucher.** Sellers must be able to substantiate, through documentation, the amount the customer paid for the redeemed discount voucher and any discount applied to the sale.

(A) If a discount voucher indicates the amount the customer paid, the seller must include that amount in the sales price of the product purchased.

(B) If the seller, through its agreement with the discount voucher provider, knows the amount the customer paid for the discount voucher, that amount is to be included in the sales price of the product purchased.

(C) If the seller does not know at the time of sale the amount the customer paid to obtain a payment instrument and thus does not know whether the instrument is a discount voucher, the seller must treat the consideration paid by the customer as equal to the face value of the instrument.

(b) **Cash discounts.** A cash discount is an incentive for the buyer to pay the seller's invoice price of goods or charges for services on or before a specified date. RCW 82.04.160. Cash discounts may be deducted when determining the measure for the B&O tax.

Example 4. Mann's Lumber Shop (Mann's) sells construction material to Ken, who builds sheds for resale. Mann's bills Ken for \$2,000.00, and offers Ken a 10% discount if he pays the invoiced amount within ten days. Ken pays the invoice upon receipt and takes a 10% discount. Mann's may reduce its gross sales figure by \$200 when determining its wholesaling B&O tax.

(i) **Extracting or manufacturing.** Discount deductions are allowed under the extracting or manufacturing classifications only when the value of the products is determined from the gross proceeds of sales.

No discount is available if tax is computed by other means authorized by RCW 82.04.450 (e.g., gross proceeds determined by sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers).

(ii) **Retail sales tax.** Cash discounts are not deductible for retail sales tax purposes when the seller collects the tax on the selling price before the discount is taken and no portion of the tax is refunded to the buyer.

Example 5. Mann's sells Richard all materials needed for a shed that Richard wants to build for extra storage. Mann's bills Richard for \$500 plus retail sales tax at 9.5% (\$500 + \$47.50). Mann's offers a 10% discount if Richard pays the invoiced amount within ten days. Richard neglects to take advantage of the offered discount even though he pays the full invoice within ten days. Mann's gives Richard a credit for \$50. Mann's may deduct the \$50 discount when reporting retailing B&O tax, but cannot when reporting retail sales tax as no sales tax was refunded.

Example 6. Mann's sells George all the materials needed for a shed that George plans to build for storage. Mann's bills George for \$500 plus retail sales tax at 9.5% (\$500 + \$47.50 = \$547.50). Mann's offers a 10% discount if George pays the invoiced amount within ten days. George takes advantage of the cash discount and pays \$492.75. Mann's must report a sale of \$450 and sales tax of \$42.75 on its excise tax return.

(c) **Retail stores' coupons.** Retail stores' coupons are issued by retail stores and redeemable only at that store or at affiliated stores of the chain. The coupons offer a reduced price for a specific item upon presentation at the store. The price reduction is a discount, and the retail store must report the amount actually paid by the buyer when reporting retail sales and B&O taxes.

(8) **What is not a bona fide discount?** Bona fide discounts do not include discounts on the selling price to the buyer, when the buyer is required to perform a service to receive a discount. Examples of services that may be required include advertising, shelf placement of product, special in-store displays, and hiring product demonstrators to promote sales.

(a) **Slotting fees.** Grocers sometimes receive discounts, allowances, slotting fees, or free product from manufacturers if the grocers provide shelf space for new products or advantageous shelf space for display of the manufacturers' products. Grocers' product placement or slotting activities in exchange for consideration from manufacturers constitute business transactions. RCW 82.04.140. Receipts received by grocers for product placement or slotting activities are taxable income to the grocers under the service and other activities B&O tax classification.

(b) **Manufacturers' or distributors' coupons.** Manufacturers' or distributors' coupons offer a reduction in price of a specified amount on the customer's purchase of specified items. The manufacturer or distributor will redeem these coupons when they are turned in by the seller. Redemption is usually at full face value plus a small handling charge. In this case, the seller actually receives the full retail price for the item sold. Tax is due on the full retail price.

(c) **Manufacturers' rebates.** Manufacturers sometimes make rebates available to buyers. Normally the buyer pays the seller the full purchase price for an item, and then sends requested documentation with a rebate claim form to the manufacturer. The rebate is sent directly to the buyer.

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

(i) Seller's measure of tax. A cash payment by the manufacturer to the buyer has no effect on the selling price of the sales transaction that occurred between the seller and buyer. The measure of the tax remains the total consideration paid or delivered to the seller by the buyer.

(ii) Automobile manufacturers' sales promotions. Automobile manufacturers routinely run sales promotions offering a rebate or cash payment directly to the buyer. As an alternative to direct payment, these programs may allow the buyer to assign his or her right to the rebate to the selling dealer. The assignment from the buyer to the seller of the right to a manufacturer's rebate is a part of the consideration paid or delivered by the buyer to the seller. In such cases, the measure of the B&O tax and retail sales tax must include the value of the manufacturer's rebate.

(d) Manufacturers' incentives to retailers. Except as provided in subsection (7)(b) of this rule regarding cash discounts, a payment or credit from a manufacturer or distributor to a retailer that is conditioned on the retailer making sales of services or tangible personal property to consumers, or engaging in any activity other than making the original wholesale purchase from the manufacturer or distributor, is not a bona fide discount.

(9) Patronage dividends. A patronage dividend is the distribution of a member's share of the profits of a cooperative association based on the quantity of purchases made by the member. The amount of a patronage dividend (rebate or refund) is determined by:

- The expenses of doing business;
- The volume of sales to other members; and
- The proportion of business the specific member has conducted with the cooperative.

A patronage dividend determined in this manner is simply a redistribution of the cooperative's "profit," even though the cooperative may refer to accounting mechanisms such as "tentative" or "delayed" invoices, or to "deferred discounts."

A member receiving dividends may deduct the amount received from gross income if it reports the income and qualifies for the investment income deduction under RCW 82.04.4281.

(a) Exception. Patronage dividends that are granted in the form of discounts in the selling price of specific articles (for example, a rebate of five cents per gallon on purchases of gasoline) are deductible from the gross income received by the taxpayer granting the dividends.

(b) Example 7. AB Cooperative, a nonprofit association, sells equipment to members and nonmembers. All equipment is sold at the normal and competitive prices. At year-end the volume of business done with members is determined, and proportionate shares of net profit are refunded. These dividends are not discounts on the selling price of specific articles and are not deductible from the cooperative's gross proceeds of sales when determining taxability.

(c) Example 8. MAX, a cooperative selling association comprised of several franchise dealers, sets up refunds as patronage dividends to comply with the Robinson-Patman Act. This act allows MAX to return to its dealers net earnings resulting from trading operations in proportion to purchases from or through the association.

Each purchase is invoiced to the dealer at the suggested wholesale price with net price to MAX also indicated. Every month dealers pay a regular flat fee plus a fixed percentage assessed on volume of purchases for payment of operational expenses. Refunds of the differ-

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ence between the suggested wholesale price and the net cost are made to dealers quarterly.

The patronage dividends are distributions of the cooperative corporation's profits and are not deductible discounts because the discounts were not provided as a part of the sale of a particular article.

(10) **Payments to dealers for "make-ready" services.** Equipment dealers may be required by the manufacturer to perform or be responsible for "make-ready" services. These services generally include the inspection, conditioning, and necessary repair of the equipment prior to the sale by the dealer. Payments for "make-ready" services are not bona fide cash discounts taken by the dealer, nor do they represent any adjustment to the dealer's purchase price of the sold equipment.

Payment for these services is a cost of doing business for the manufacturer. As a cost of doing business, the payment may not be deducted from the gross proceeds of sales when the manufacturer determines its B&O tax liability. Payments or credits received by the dealer for services performed are subject to the wholesaling B&O tax classification.

DRAFT

NEW SECTION

WAC 458-20-278 Returned goods, defective goods—Motor vehicle lemon law. (1) **Introduction.** This rule explains how sellers should report business and occupation (B&O) tax and retail sales tax when goods are returned and refunds or credits are granted.

(a) **Contract of sale.** Generally, when a contract of sale is made subject to cancellation at the option of one of the parties or to revision in the event the goods sold are defective, the gross proceeds actually derived from the contract and the selling price are determined by the transaction as finally completed.

(b) **Examples.** The examples in this rule identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **Returned goods.** When sales are made either upon approval or upon a sale or return basis, and the buyer returns the property purchased and the entire selling price is refunded or credited to the buyer, the seller may deduct an amount equal to the selling price from gross proceeds of sales in computing tax liability. A deduction is available under the retail sales tax classification only if the amount of sales tax previously collected from the buyer has been refunded by the seller to the buyer. If the property purchased is not returned within the guaranty period as established by contract, or if the full selling price is not refunded or credited to the buyer, a presumption is raised, subject to rebuttal by a preponderance of the evidence, that the property returned is not a returned good but is an exchange or a repurchase by the seller.

(a) **Example 1.** Stan sells an article for \$60.00 and credits his sales account with the sale. The buyer returns the article purchased within the guaranty period and the purchase price and the sales tax previously paid by the buyer is refunded or credited to the buyer. If the sale has not been reported to the department of revenue, Stan may deduct \$60.00 for the returned article from his gross sales amount. If Stan has already reported the sale on his excise tax return, he may take a deduction for \$60.00 for the returned article on his next filed excise tax return.

(b) **Restocking fees charged on returned goods.** A "restocking fee" is a fee intended to cover the cost, by the seller, of restoring returned items to saleable condition and returning them to inventory. The restocking fee is the same regardless of when a purchased item is returned to the seller by the buyer.

If all the conditions of this subsection are met for returned merchandise with the exception of a restocking fee, the transaction will be viewed as a sale return and not as a repurchase. When a sale return occurs, a deduction may be taken under the appropriate tax classification used in reporting the original sale. However, the restocking fee is considered income and taxable under the service and other business activities B&O tax classification.

(i) **Example 2.** Ace Auto Parts (Ace) sells a catalytic converter to Stan for \$400.00 plus tax. The receipt that Ace gives Stan states that returns must be made within 30 days and a \$35.00 restocking fee will apply to returns. Stan realizes after he gets the part home that it is the wrong one for his car. When Stan returns the part, he finds that Ace does not have the catalytic converter that he needs for his

car. Ace computes Stan's refund of \$400.00 plus sales tax minus the \$35.00 restocking fee. Ace may reduce its gross retail sales by \$400.00, but must report the \$35.00 restocking fee under the service and other business activities B&O tax classification.

(ii) **Example 3.** Breen's Department Store (Breen's) accepts returned items, in new condition, but may discount the original purchase price based on the time elapsed since purchase.

Return within	Amount of credit
0 – 30 days from receipt	100% of original purchase price
31 – 60 days from receipt	75% of original purchase price
61 + days from receipt	50% of original purchase price

For example, Jill purchases a dress from Breen's and returns the dress 45 days after purchase. Breen's refunds or provides a credit to her of 75 percent of the cost of the dress. The amount retained by Breen's is not considered a restocking fee. This is considered a repurchase by Breen's, and thus no deductions are allowed under the retailing B&O tax or retail sales tax classifications on Breen's excise tax return.

(3) **Defective goods.** This subsection does not apply to new motor vehicles under an original manufacturer's warranty. See subsection (4) of this rule regarding new motor vehicles under an original manufacturer's warranty.

When bona fide refunds, credits, or allowances are given within the guaranty period by a seller to a buyer on account of defects in goods sold, the seller may deduct the amount of such refunds, credits, or allowances in computing its tax liability, if the seller has refunded the proportionate amount of the sales tax it previously collected from the buyer.

Example 4. On April 5th, Stan sells an item to Bob for \$60.00. Stan records the sale as gross income. The item is later found to be defective by Bob.

(a) Bob returns the item prior to Stan reporting the sale on his excise tax return, and remitting B&O tax and the collected retail sales tax. Stan refunds Bob the purchase price including the retail sales tax. Stan may subtract \$60.00 from his gross income when completing his excise tax return.

(b) Bob returns the defective article and Stan allows him a full credit of \$60.00 towards another article. The new article's price is \$80.00. Bob pays, in cash, the additional \$20.00 plus retail sales tax on the \$20.00. Stan records the \$20.00 as gross sales. The allowance for the defective article (\$60.00) is already included in Stan's gross sales, thus only the \$20.00 (\$60.00 credit and \$20.00 cash = \$80.00 purchase price) should be added to the gross sales amount.

(c) Bob waits a month to return the defective item for a refund. Stan refunds Bob the full purchase price of \$60.00 plus the retail sales tax. As Stan has already reported the sale on his excise tax return, he may deduct \$60.00 under "Returns" for both the retailing B&O tax and retail sales tax classifications on his next excise tax return.

(d) Bob is willing to keep the defective item but requests a partial refund to offset repair costs. Stan refunds Bob \$25.00 of the purchase price, plus the applicable retail sales tax. As Stan has al-

ready reported the sale on his excise tax return, he may take a deduction for \$25.00 under both the retailing B&O tax and retail sales tax classifications on his next excise tax return.

(4) **Motor vehicle warranties - Lemon law.** A manufacturer that replaces or repurchases a new motor vehicle under warranty because of a defective condition is required to refund to the consumer the "collateral charges" (RCW 19.118.021(2)) which include retail sales tax. The refund will be made to the consumer by the manufacturer or by the dealer for the manufacturer. The department of revenue will then verify calculations and credit or refund the correct amount of the tax so refunded. For information on the lemon law, other than retail sales tax, contact the attorney general's office.

(a) **What documentation is needed for credit or refund?** To receive a credit or refund, the manufacturer or dealer must provide the following information to the department of revenue establishing that the dealer collected the retail sales tax and that it was refunded to the consumer:

(i) A complete copy of the new motor vehicle arbitration board decision including the owner signed acceptance/denied page; or

(ii) The Lemon Law Refund Request Verification Form completed in nonarbitrated situations; and

(iii) A statement signed and dated by the consumer accepting the arbitration board decision or the manufacturer's nonarbitrated repurchase offer. The statement must include the consumer's name, repurchase offer date, total repurchase amount, sales tax amount refunded, the name of the manufacturer issuing the refund and any other supporting documents needed to substantiate the claim; and

(iv) A copy of the dealer invoice (purchase order) or lease agreement, signed by the consumer, that shows the amount of retail sales tax paid; and

(v) A copy of the manufacturer's refund check(s) for repurchase drawn payable to the consumer and/or lien holder; and

(vi) For the calculation of reasonable offset for mileage provide all supporting documentation necessary to verify the calculation used and documentation (e.g., all dealer repair records or service records) to verify the attempted repairs to the vehicle did comply with RCW 19.118.041.

(b) **Where can I obtain the Lemon Law Refund Request Verification Form?** The "Lemon Law Refund Request Verification Form" is available on the department's web site at dor.wa.gov, or by calling the department's telephone information center at 1-800-647-7706, or writing to:

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

(c) **Where should documentation be sent?** All documentation from manufacturers for credit or refund on lemon law refunds should be sent to:

Audit Division/Lemon Law Refund Section
Department of Revenue
P.O. Box 47474
Olympia, WA 98504-7474