



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 09-07-088 ; 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 14-22-085

Title of rule and other identifying information:

WAC 458-20-153 *Funeral directors* – This rule explains the application of business and occupation (B&O), retail sales, and use taxes to the business activities of funeral establishment and the application of tax to income from prearrangement funeral service contracts.

WAC 458-20-154 *Cemeteries, crematories, columbaria* – This rule explains the application of business and occupation (B&O), retail sales, and use taxes to the business activities of cemeteries and the application of tax to income from prearrangement contracts.

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 15, 2015 **Time:** 10:00 A.M.

Date of intended adoption: July 22, 2015

(Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Richard Cason
Address: Department of Revenue
Post Office Box 47453
Olympia, Washington 98504-7453

E-mail: RichardC@dor.wa.gov

By: July 15, 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:

WAC 458-20-153 – The purpose of the proposed changes is to include a discussion of the taxability of prearrangement funeral service contracts and when income from such contracts is taxable. The changes also include a few examples.
WAC 458-20-154 – The purpose of the proposed changes is to include a discussion of the taxability of prearrangement contracts (commonly referred to as "pre-need" or "prepaid" arrangements) and the sale of interment rights, merchandise, and services. The changes also include a few examples.

Reasons supporting proposal: To update rule to address current industry practices.

Statutory authority for adoption:

RCW 82.32.300 and RCW 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 3, 2015

NAME Dylan Waits

SIGNATURE

TITLE

Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 03, 2015

TIME: 11:37 AM

WSR 15-12-122

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..... Richard Cason	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360) 534-1577
Implementation.... Dylan Waits	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360) 534-1583
Enforcement..... Alan Lynn	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360) 534-1599

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.

These 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 83-07-033, filed 3/15/83)

WAC 458-20-153 Funeral ((directors)) establishments. ((Funeral directors commonly quote a lump sum price for a standard funeral service, which includes the furnishing of a casket, professional services, care of remains, funeral coach, floral car and the securing of permits.

Business and Occupation Tax

Retailing. The gross amount subject to the retail sales tax as outlined below, is taxable under the retailing classification of the business and occupation tax except that there may be deducted, for purposes of the business tax only, amounts received as reimbursement for expenditures for goods or services supplied by others who are not persons employed by, affiliated, or associated with the funeral home, when such amounts were advanced by the funeral home as an accommodation to the person paying for a funeral; but this deduction is allowed only if such expenditures advanced are billed to the person paying for the funeral at the exact amount of the expenditure advanced and such amounts are separately itemized in the billing statement to such person.

Service and other business activities. That portion of the gross income derived from engaging in business as a funeral director which is not taxable under the retailing classification is taxable as service and other business activities.

Retail Sales Tax

Where the funeral director quotes a lump sum price for a standard funeral service, which includes both the sale of tangible personal property and a charge for the rendering of service, the retail sales tax is collected upon one half of such lump sum price. Clothing, outside case (a concrete or metal box into which the casket is placed) and other tangible personal property furnished in addition to the casket must be billed separately and the retail sales tax collected thereon.

The retail sales tax is not applicable to sales made to funeral directors of tangible personal property which is resold separate and apart from the rendition of professional services, provided the vendor receives from the funeral director a resale certificate in the usual form. The property so purchased includes the casket, clothing, outside case and acknowledgment cards.

The retail sales tax is applicable to sales to funeral directors of tangible personal property which is consumed in the rendition of professional services. The property so purchased includes all preparation room supplies (embalming fluid and other chemicals, solvents, waxes, cosmetics, eye caps, gauze, cotton, etc.). The sales tax is also applicable to sales to such persons of tools and equipment.

Use Tax

The use tax applies upon the use within this state of all articles of tangible personal property used in the performance of professional services when such articles have been purchased or acquired under conditions whereby the Washington retail sales tax has not been paid.)) (1) **Introduction.** This rule explains:

(a) The application of business and occupation (B&O), retail sales, and use taxes to the business activities of funeral establishments; and

(b) The application of tax to income derived from prearrangement funeral service contracts.

For the purposes of this rule, the term "funeral establishment" means a person licensed under RCW 18.39.145. Persons operating cemeteries should refer to WAC 458-20-154 (Cemeteries, crematories, columbaria) for tax-reporting information.

The funeral and cemetery board (board) regulates funeral establishments. For funeral establishments, refer to chapter 18.39 RCW and chapters 308-47, 308-48, and 308-49 WAC for information on the laws and administrative rules governing their business activities.

(2) **General tax reporting responsibilities.** The gross proceeds attributable to funeral activities are taxable when income is accrued in the books and records or when services are performed or merchandise is delivered, whichever is earlier.

The gross proceeds for funeral services are subject to tax under the service and other activities classification of the B&O tax. The gross proceeds from the retail sales of tangible personal property such as urns, caskets, clothing, outside casket cases, floral arrangements, plants, and acknowledgment cards are subject to tax under the retailing classification of the B&O tax. Funeral establishments are also responsible for collecting and remitting to the department of revenue (department) retail sales tax on retail sales of tangible personal property unless specifically exempt by law.

Funeral establishments commonly quote a lump sum price for a standard funeral service, which includes the furnishing of funeral services and tangible personal property. Where the funeral establishment quotes a lump sum price for a standard funeral service, which includes both the sale of a casket and a charge for the rendering of service, the retail sales tax is collected upon one-half of such lump sum price. Clothing, outside case (a concrete or metal box into which the casket is placed) and other tangible personal property furnished in addition to the casket must be billed separately and the retail sales tax collected thereon.

(a) **Reimbursement for accommodation expenditures.** Amounts received by a funeral establishment as reimbursement for goods or services provided by persons not employed by, affiliated, or associated with the funeral establishment may be deducted from the measure of the B&O tax if these amounts have been reported as gross income on the funeral establishment's excise tax return. These amounts are deductible if advanced to accommodate the customer and separately itemized on the billing statement or invoice in the exact amount of the expenditure. See RCW 82.04.4296.

(b) **In-state services with out-of-state interment.** A funeral establishment may perform funeral services or other services such as preparing the remains of a deceased person and placing the remains in a casket within Washington, with the remains subsequently removed to another state for interment. In these cases, the B&O and retail sales taxes generally apply to the income received from the sale of funeral merchandise and services as explained in this subsection. The merchandise (e.g., casket or urn) is delivered to the buyer within Washington when the merchandise is used in performing these services, even if interment subsequently occurs outside the state.

Neither B&O nor retail sales taxes apply to the sale of tangible personal property, without intervening use, delivered by the seller to the buyer at an out-of-state location. Refer to WAC 458-20-193 (In-bound and outbound interstate sales of tangible personal property) for

more information regarding the delivery requirements for out-of-state sales of tangible personal property.

(c) **Sales to the federal government.** Sales of tangible personal property directly to the federal government are exempt from the retail sales tax, though the seller remains subject to B&O tax unless a specific exemption applies. Sales of tangible personal property to other persons, whether paid with federal funds or through a reimbursement arrangement, are fully subject to the retail sales tax. For additional information about the taxability of sales to the federal government, refer to WAC 458-20-190 (Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments).

(3) **Funeral establishments purchasing tangible personal property.** Generally, retail sales tax is due when purchasing items used or consumed by funeral establishments when providing professional services. These items generally include, but are not limited to, equipment, tools, furniture, and all preparation room supplies such as embalming fluid and other chemicals, solvents, waxes, cosmetics, eye caps, gauze, and cotton.

(a) **Items purchased for resale.** Tangible personal property purchased for resale without intervening use is not subject to retail sales tax. Property commonly purchased for resale by funeral establishments includes, but is not limited to, urns, caskets, clothing, outside casket cases, flowers, plants, and acknowledgment cards. A funeral establishment purchasing tangible personal property for resale must provide to the seller, a reseller permit to document the wholesale nature of the sale as provided in WAC 458-20-102 (Reseller permits).

(b) **Deferred sales and use tax.** If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. For detailed information regarding use tax, refer to WAC 458-20-178 (Use tax).

(4) **Prearrangement contracts and trusts.** Funeral establishments often enter into prearrangement contracts requiring them to provide funeral services and merchandise at some future date. Unless otherwise exempt, the law requires funeral establishments to place a portion of the cash purchase price of the contract (at least ninety percent as of the effective date of this section), excluding retail sales tax, into one or more prearrangement funeral service trusts. Withdrawal of trust funds may only occur upon fulfillment or cancellation of the contract. See chapter 18.39 RCW.

(a) **When does tax liability arise?** Amounts placed in prearrangement funeral service trusts are subject to excise tax upon withdrawal from the trust accounts. In other words, the amounts are taxable upon fulfillment or cancellation of the contract. Refer to subsection (2) of this section (General tax reporting responsibilities) for the tax treatment of amounts related to the fulfillment of the contract.

(b) **Retail sales tax - Prearrangement funeral service trust accounts.** If retail sales tax paid by the buyer is placed into a prearrangement funeral service trust account, the tax is reported upon fulfillment of the contract and remitted to the department at that time.

If retail sales tax paid by the buyer is not placed into a prearrangement funeral service trust account, the tax must be reported on the excise tax return for the current reporting period and remitted to the department.

Upon cancellation of a prearrangement contract, a refund of retail sales tax remitted by a funeral establishment to the department is subject to the time limitations on refunds in RCW 82.32.060. For example, the law prohibits the department from refunding retail sales tax to a funeral establishment for a prearrangement contract that is canceled five years after the retail sales tax associated with the contract is remitted to the department. See WAC 458-20-229 (Refunds).

(c) **Contract cancellation and trust administration fees.** Amounts retained by the funeral establishment when a prearrangement funeral service contract is canceled are subject to the service and other activities B&O tax, except that any amounts allocable to a retail sale of merchandise are subject to retailing B&O and retail sales taxes. Administration fees deducted from a prearrangement funeral service trust by the administrator are also subject to the service and other activities B&O tax.

(5) **Sourcing.** In general, the place of sale occurs where the body is placed in the casket. For other sourcing information, refer to WAC 458-20-145.

(6) **Examples.** The following examples identify a number of facts and state a conclusion regarding the taxability of funeral establishments. The tax results of other situations must be determined after a review of all of the facts and circumstances. Use these examples only as a general guide.

(a) John and Jane Doe contracted with ABC Funeral Home (ABC) for the funeral of a deceased relative. John and Jane also purchased a casket from ABC. Funeral services purchased from ABC included preparing the body of the deceased for viewing, arranging for the final disposition, providing facilities for the visitation and funeral service, and transporting the deceased and the mourners to the place of final disposition.

(i) ABC owes service and other activities B&O tax for the funeral services charge.

(ii) The charge for the casket is subject to retailing B&O and retail sales taxes.

(b) John and Jane Doe entered into a prearrangement funeral service contract with ABC for the purchase of funeral merchandise and services to be provided upon their deaths. John and Jane made a down payment when signing the contract and agreed to pay the balance in sixty monthly installments. The merchandise and services John and Jane purchased include a casket, preparing the body of the deceased for viewing, arranging for the final disposition, providing facilities for the visitation and funeral service, and transporting the deceased and the mourners to the place of final disposition. The contract itemizes retail sales tax and provides for a finance charge on the unpaid balance of the contract. ABC places all receipts under the contract, including finance charges, into a prearrangement funeral service trust account.

ABC must report:

(i) The charges for funeral services and the finance charges under the service and other activities B&O tax classification at the time they perform the services; and

(ii) The charge for the casket is subject to retailing B&O and retail sales tax at the time it is used.

AMENDATORY SECTION (Amending WSR 78-06-083, filed 6/1/78)

WAC 458-20-154 Cemeteries, crematories, columbaria.

~~((Business and Occupation Tax~~

~~**Retailing.** The gross proceeds derived from the sale of tangible personal property taxable under the retail sales tax are also taxable under the retailing classification.~~

~~**Service and other business activities.** Income derived from rendition of interment services is taxable under the service and other business activities classification. Sales or transfers of plots, crypts, and niches for interment of human remains, irrespective of whether the document of transfer is called a deed or certificate of ownership, are charges for the right of interment, an interest similar to a license to use real estate, and the entire gross income therefrom is taxable under the service and other activities classification without any deduction for amounts set aside to funds for perpetual care.~~

~~**Retail Sales Tax**~~

~~Cemeteries, crematories and columbaria are subject to the provisions of the retail sales tax with respect to retail sales of boxes, urns, markers, vases, plants, shrubs, flowers, and other tangible personal property.~~

~~Revised June 1, 1978.~~

~~Effective July 1, 1978.)~~ **(1) Introduction.** This rule explains:

~~(a) The application of business and occupation (B&O), retail sales, and use taxes to the business activities of cemeteries;~~

~~(b) The application of B&O and retail sales taxes to amounts derived by cemeteries from prearrangement contracts (commonly referred to as "preneed" or "prepaid" arrangements) for the sale of interment rights, merchandise, and services.~~

~~For purposes of this rule, the term "cemeteries" includes cemeteries, burial parks, crematories, columbaria, and mausoleums. Refer to WAC 458-20-153 (Funeral establishments) for funeral establishment tax-reporting information.~~

~~The funeral and cemetery board regulates private cemeteries. Refer to Title 68 RCW and Title 98 WAC for information on the laws and administrative rules governing cemeteries.~~

~~**(2) General tax reporting responsibilities.**~~

~~(a) **Sales of interment services and interment rights.** The gross proceeds attributable to cemetery activities are taxable when the amounts are shown as income in the books and records or when services are performed or merchandise is delivered, whichever is earlier.~~

~~Amounts derived from interment services such as document recording, opening and closing the interment space, and placing grave liners or vaults in the interment space are subject to the service and other activities B&O tax. Sales or transfers of plots, crypts, and niches for the interment of human remains, irrespective of how the document of transfer is described (e.g., deed, certificate of ownership, or certificate of interment rights), are charges for the right of interment, an interest similar to a license to use real estate. Thus, the gross income from sales of interment rights is subject to B&O tax under the service and other activities classification.~~

~~(b) **Sales of merchandise, including installing, repairing, cleaning, altering, or improving property.** The gross proceeds from retail sales of tangible personal property such as monuments, markers, memorials, nameplates, outer burial containers (e.g., vaults or grave lin-~~

ers), boxes, urns, vases, benches, plants, shrubs, and flowers are subject to B&O tax under the retailing classification. Retailing B&O tax also applies to charges by cemeteries for installing, repairing, cleaning, altering, or improving tangible personal property of or for consumers. Cemeteries are also responsible for collecting and remitting to the department of revenue (the department) retail sales tax on retail sales of tangible personal property and charges for installing, repairing, cleaning, altering, or improving tangible personal property of or for consumers unless specifically exempt by law. Thus, charges for installing markers and monuments are subject to retailing B&O and retail sales taxes.

(c) **Sales to the federal government.** Sales of tangible personal property directly to the federal government are exempt from the retail sales tax, though the seller remains subject to B&O tax unless a specific exemption applies. Sales of tangible personal property to other persons, whether paid with federal funds or through a reimbursement arrangement, are fully subject to the retail sales tax. For additional information about the taxability of sales to the federal government, refer to WAC 458-20-190 (Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments).

(3) **Cemeteries purchasing tangible personal property.** Generally, retail sales tax is due when purchasing tangible personal property such as tools and supplies used or consumed by cemeteries when providing interment services.

(a) **Items purchased for resale.** Tangible personal property purchased for resale without intervening use is not subject to retail sales tax. Property commonly purchased for resale by cemeteries includes, but is not limited to, monuments, markers, memorials, nameplates, liners, vaults, boxes, urns, vases, benches, plants, shrubs, and flowers. Cemeteries purchasing tangible personal property for resale must provide to the seller a reseller permit to document the wholesale nature of the sale as provided in WAC 458-20-102 (Reseller permits).

(b) **Deferred sales and use tax.** If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless specifically exempt by law. For detailed information about use tax, refer to WAC 458-20-178 (Use tax).

(4) **Prearrangement contracts.** Cemeteries often enter into prearrangement contracts with customers for the purchase of merchandise and services, unconstructed crypts or niches, or undeveloped graves to be furnished at a future date. Executed contracts are paid in either a lump sum or in installments. Unless otherwise exempt, the law requires cemeteries to place a percentage of all funds collected in payment of each prearrangement contract in a prearrangement trust account. As of the effective date of this section, the amount required in a prearrangement trust account is equal to the greater of (for merchandise) fifty percent of the contract price or the wholesale cost of the item, (for services) fifty percent of the contract price, or the direct cost of providing the service. Withdrawal of trust funds may only occur upon fulfillment or cancellation of the contract. See chapter 68.46 RCW.

(a) **When does tax liability arise?** Amounts placed into prearrangement trust accounts are subject to excise tax upon withdrawal from the prearrangement trust accounts. In other words, the amounts are taxable upon fulfillment or cancellation of the contract. Refer to

subsection (2) of this section (General tax reporting responsibilities) for the tax treatment of amounts related to the fulfillment of the prearrangement contract.

(b) **Retail sales tax - Prearrangement trust accounts.** If retail sales tax paid by the buyer is placed into a prearrangement trust account, the retail sales tax is reported and remitted to the department upon fulfillment of the prearrangement contract.

If retail sales tax paid by the buyer is not placed into a prearrangement trust account, the tax must be reported on the excise tax return for the current reporting period and remitted to the department.

Upon cancellation of a prearrangement contract, a refund of retail sales tax remitted by a cemetery to the department is subject to the time limitations on refunds provided by RCW 82.32.060. For example, the law prohibits the department from refunding retail sales tax to a cemetery for a prearrangement contract that is canceled five years after the retail sales tax associated with the contract is remitted to the department. See also WAC 458-20-229 (Refunds).

(c) **Contract cancellation and trust administration fees.** Amounts retained by a cemetery from a canceled prearrangement contract are subject to service and other activities B&O tax, except that any amount allocable to a retail sale of merchandise is subject to retailing B&O and retail sales taxes. Administration fees deducted from a prearrangement trust fund by the administrator are also subject to the B&O tax under the service and other activities classification.

(5) **Examples.** The following examples identify a number of facts and then state a general conclusion regarding the taxability of cemeteries. The tax results of other situations must be determined after a review of all of the facts and circumstances. Use these examples only as a general guide.

(a) John and Jane Doe contracted with ABC Cemetery Association (ABC) for the interment of a deceased relative. The interment rights, merchandise, and services provided by ABC include an interment plot, an outer burial container, burial of the decedent, a marker, and installation of the marker. In addition, ABC charges a document-recording fee.

(i) ABC is subject to service and other activities B&O tax on charges for the interment plot, burial of the decedent, and the document-recording fee.

(ii) The charges for the outer burial container, marker, and marker installation are subject to retailing B&O and retail sales taxes.

(b) John and Jane Doe entered into a prearrangement contract with ABC for the purchase of interment rights, merchandise, and services provided upon their deaths. John and Jane made a down payment when signing the contract and agreed to pay the balance in sixty monthly installments. The interment rights, merchandise, and services purchased by John and Jane include interment plots, outer burial containers, burial of their remains, markers, and installation of the markers. The contract itemizes retail sales tax and provides for a finance charge on the unpaid balance.

ABC places all receipts under prearrangement contracts, including the finance charges, into a prearrangement trust account.

ABC must report:

(i) The amounts received for the interment plots under the service and other activities B&O tax classification at the time the income

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

is recognized on the books and records or upon fulfillment of the contract, whichever is earlier;

(ii) The amounts received for the burial of remains, the document-recording fee, and the finance charges under the service and other activities B&O tax classification at the time they perform the services; and

(iii) Retailing B&O and retail sales taxes on the sale of the outer burial containers, markers, and marker installation in the reporting period during which they deliver the merchandise and perform the installation.

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