



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)
(Implements RCW 34.05.310)
Do NOT use for expedited rule making

Agency: Department of Revenue

Subject of possible rule making: WAC 458-20-174 (Rule 174) *Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or foreign commerce* and WAC 458-20-17401 (Rule 17401) *Use tax liability for motor vehicles, trailers, and parts used by motor carriers operating in interstate or foreign commerce.*

Statutes authorizing the agency to adopt rules on this subject: RCW 82.32.300 and 82.01.060(2)

Reasons why rules on this subject may be needed and what they might accomplish: Rule 174 explains the application of the business & occupation tax and the retail sales tax on sales to for hire motor carriers operating in interstate or foreign commerce. Rule 17401 explains the use tax and use tax exemptions that apply to for hire motor carriers.

The Department is considering an update to both rules and plan to include information from ETAs 3185 & 3186 pertaining to the sourcing and attribution of income on leases and rentals of tangible personal property and the use tax liability for lessees on leased tangible personal property. Some general updating is also being considered.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: None.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Parties interested in this rule making may contact the individual listed below. The public may also participate by providing written comments throughout this rule making or giving oral testimony at the public meeting or public hearing.

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:

A preliminary draft of possible rule changes is available via the Department's online [Rules Agenda](#).

Written comments may be submitted by mail and should be directed to Gayle Carlson at either of the following addresses: email: GayleC@dor.wa.gov, or mailing address: Gayle Carlson, Tax Policy Specialist, ITA Division, PO Box 47453, Olympia, WA 98504-7453.

Written and oral comments will be accepted at the public meeting.

Public meeting location:

Capitol Plaza Building
1st Floor Appeals Conference Room
1025 Union Avenue SE
Olympia, Washington

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 meeting date. For Hearing Impaired please contact us via the Washington Relay Operator at (800) 833-6384.

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

Date: December 30, 2014 **Time:** 1:30 P.M.

Date November 18, 2014

Name

Dylan Waits

Signature

Title Rules Coordinator

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OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: November 18, 2014

TIME: 4:28 PM

WSR 14-23-080

AMENDATORY SECTION (Amending WSR 08-14-018, filed 6/20/08, effective 7/21/08)

WAC 458-20-174 Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or foreign commerce. (1) **Introduction.** This ~~((section))~~ rule explains the ~~((retail sales tax exemptions provided by RCW 82.08.0262 and 82.08.0263 for))~~ application of the business and occupation tax on sales to for hire motor carriers operating in interstate or foreign commerce. ~~((Addressed are))~~

This rule also explains the retail sales tax exemptions provided by RCW 82.08.0262 and 82.08.0263 for sales to for hire motor carriers operating in interstate or foreign commerce, and addresses the requirements ~~((which))~~ that must be met and the documents ~~((which))~~ that must be preserved to substantiate a claim of retail sales tax exemption. Motor carriers should refer to WAC 458-20-17401 for a discussion of the use tax and use tax exemptions available to motor carriers for the purchase or use of vehicles and parts under RCW 82.12.0254.

(2) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **Component parts** means any tangible personal property that is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries, paint, permanently affixed decals, and tires.

(i) Component parts include the axle and wheels, referred to as a "converter gear" or "dolly," that is used to connect a trailer behind a tractor and trailer. Component parts also include tangible personal property that is attached to the vehicle and used as an integral part of the motor carrier's operation of the vehicle, even if the item is not required mechanically for the operation of the vehicle. It includes cellular telephones, communication equipment, fire extinguishers, and other such items, whether they are permanently attached to the vehicle or held by brackets that are permanently attached. If held by brackets, the brackets must be permanently attached to the vehicle in a definite and secure manner with these items attached to the bracket when not in use and intended to remain with that vehicle.

(ii) Component parts do not include antifreeze, oil, grease, and other lubricants that are considered consumed at the time they are placed into the vehicle, even though they are required for operation of the vehicle. It does include items such as spark plugs, oil filters, air filters, hoses, and belts.

(b) **Primary property location** is the address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The primary property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(3) **Business and occupation tax.** Business and occupation (B&O) tax is due on all sales to motor carriers ~~((when delivery is made in))~~ that are sourced to Washington, notwithstanding that the retail sales tax may not apply because of the specific statutory exemptions provided by RCW 82.08.0262 and 82.08.0263.

(a) **Retailing of interstate transportation equipment B&O tax classification.** ~~((This B&O tax classification, with respect to sales to motor carriers, applies to retail sales which are exempt from retail sales tax because of the provisions of RCW 82.08.0262 or~~

~~82.08.0263. (See RCW 82.04.250.)~~) The retailing of interstate transportation equipment B&O tax classification (see RCW 82.04.250) applies to the following (~~(, but only when)~~) if the retail sales tax exemption requirements for RCW 82.08.0262 or 82.08.0263 are met:

(i) Sales of motor vehicles, trailers, and component parts thereof;

(ii) ~~((The))~~ Leases of motor vehicles and trailers without operator; and

(iii) Charges for labor and services rendered in respect to constructing, cleaning, repairing, altering or improving vehicles and trailers or component parts thereof. ~~((The term "component parts" means any tangible personal property which is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries, paint, permanently affixed decals, and tires. "Component parts" includes the axle and wheels, referred to as "converter gear" or "dollies," which is used to connect a trailer behind a tractor and trailer. "Component parts" can include tangible personal property which is attached to the vehicle and used as an integral part of the motor carrier's operation of the vehicle, even if the item is not required mechanically for the operation of the vehicle. It includes cellular telephones, communication equipment, fire extinguishers, and other such items, whether themselves permanently attached to the vehicle or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the vehicle in a definite and secure manner with these items attached to the bracket when not in use and intended to remain with that vehicle. It does not include antifreeze, oil, grease, and other lubricants which are considered as consumed at the time they are placed into the vehicle, even though required for operation of the vehicle. It does include items such as spark plugs, oil filters, air filters, hoses and belts.))~~

(b) Retailing B&O tax classification. The retailing B&O tax classification applies to the following:

(i) Sales and services as described in (a)(i) through (iii) of this subsection, ~~((which))~~ that do not meet the exemption requirements provided in RCW 82.08.0262 or 82.08.0263;

(ii) Sales of equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property therein;

(iii) Sales of consumable supplies, such as oil, antifreeze, grease, other lubricants, cleaning solvents and ice; and

(iv) Towing charges.

(c) ~~((Interstate sales deduction for lease income. Persons who lease motor vehicles and trailers to motor carriers at retail (without operator) may claim an interstate sales deduction for the amount of the lease income attributable to the actual out of state use of the vehicles and trailers. Documentation substantiating such a claim must be retained by the lessor. This deduction may be taken even if the vehicle is not used substantially in interstate hauls for hire. The B&O tax applies to that portion of use of the vehicle while the vehicle is being used in Washington, even if the usage is in connection with interstate hauls and the vehicle is used substantially in hauling for hire in interstate commerce. See also WAC 458-20-193 Inbound and outbound interstate sales of tangible personal property.~~

~~(3))~~ Sourcing of sales. Except as provided in (d) of this subsection, all sales to motor carriers are sourced under the general

sourcing provisions of RCW 82.32.730. This includes leases to motor carriers that do not require recurring periodic payments.

(d) Periodic lease payments.

(i) Recurring periodic lease payments of leasing transactions described in (a) of this subsection are sourced as follows:

(A) The first payment is sourced to the location where the lessee takes possession of the transportation equipment. This is often the lessor's store location or a delivery location.

(B) Periodic payments made after the first payment are sourced for each period covered by the payment to the primary property location.

(ii) All recurring periodic lease payments of leasing transactions described in (b) of this subsection are sourced to the primary property location provided by the lessee to the lessor. The location where the lessee takes delivery of this type of equipment is immaterial.

(4) Retail sales tax. RCW 82.08.0262 and 82.08.0263 provide retail sales tax exemptions for certain sales to motor carriers when ~~((delivery is made in))~~ the sale is sourced to Washington.

(a) Sales of motor vehicles and trailers. RCW 82.08.0263 provides an exemption from the retail sales tax for sales of motor vehicles and trailers to be used for transporting ~~((therein))~~ persons or property for hire in interstate or foreign commerce. This exemption is available whether such use is by a for hire motor carrier, or by persons operating the vehicles and trailers under contract with a for hire motor carrier. The for hire carrier must hold a carrier permit issued by the Interstate Commerce Commission (ICC) or its successor agency to qualify for this exemption. The seller, at the time of the sale, must retain as a part of its records an exemption certificate ~~((which))~~ that must be completed in its entirety. The buyers' retail sales tax exemption certificate is available on the department's ((internet)) web site at ((http://dor.wa.gov)) dor.wa.gov, or can be obtained by contacting the department at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

If the department's buyers' retail sales tax exemption certificate is not used, the form used must be in substantially the following form:

Exemption Certificate

The undersigned hereby certifies that it is, or has contracted to operate for, the holder of carrier permit No., issued by the Interstate Commerce Commission or its successor agency, and that the vehicle this date purchased from you being a (specify truck or trailer and make) , Motor No. , Serial No. is entitled to exemption from the Retail Sales Tax under ~~((the provisions of))~~ RCW 82.08.0263. This certificate is given with full knowledge of, and sub-

ject to, the legally prescribed penalties for fraud and tax evasion.

Dated.....

.....
(name of carrier-purchaser)

By.....
(title)

.....
(address)

The lease of motor vehicles and trailers to motor carriers, without operator, must satisfy all conditions and requirements provided by RCW 82.08.0263 to qualify for the retail sales tax exemption. Failure to meet these requirements will require the lessor to collect the retail sales tax on the lease. ~~(. However, where the exemption from retail sales tax has not been met, a retail sales tax exemption may continue to apply to that portion of the lease while the vehicle is being used outside Washington, provided the lessor can substantiate the usage outside Washington. (See WAC 458-20-193.))~~ as provided in (c) of this subsection.

(b) Sales of component parts of motor vehicles and trailers and charges for repairs, etc. RCW 82.08.0262 provides an exemption from the retail sales tax for sales of component parts and repairs of motor vehicles and trailers. This exemption is available only if the user of the motor vehicle or trailer is the holder of a carrier permit issued by the ~~((Interstate Commerce Commission))~~ ICC or its successor agency ~~((which))~~ that authorizes transportation by motor vehicle across the boundaries of Washington. ~~((Since))~~ Because carriers are required to obtain these permits only when the carrier is hauling for hire, the exemption applies only to parts and repairs purchased for vehicles ~~((which))~~ that are used in hauling for hire. The exemption includes labor and services rendered in constructing, repairing, cleaning, altering, or improving such motor vehicles and trailers.

(i) This exemption is available whether the motor vehicles or trailers are owned by, or operated under contract with, persons holding the carrier permit. This exemption applies even if the motor vehicle or trailer to which the parts are attached will not be used substantially in interstate hauls, provided the vehicles are used in for hire hauling ~~((for hire))~~.

(ii) The seller must retain as a part of its records a completed exemption certificate. This certificate may be:

- (A) Issued for each purchase;
- (B) Incorporated in or stamped upon the purchase order; or
- (C) In blanket form certifying all future purchases as being exempt from sales tax. Blanket exemption certificates are valid for as long as the buyer and seller have a recurring business relationship. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. RCW 82.08.050 ~~((7)(e))~~.

(iii) The buyers' retail sales tax exemption certificate is available on the department's ~~((internet))~~ web site at ~~((http://dor.wa.gov))~~ dor.wa.gov, or can be obtained ~~((by contacting))~~ from the department ~~((at~~

~~Taxpayer Services
Department of Revenue~~

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

1-800-647-7706)) using the address provided in (a) of this sub-section.

If the department's buyers' retail sales tax exemption certificate is not used, the form used must be in substantially the following form:

Exemption Certificate

The undersigned hereby certifies that it is, or has contracted to operate for, the holder of a carrier permit, No., issued by the Interstate Commerce Commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state. The undersigned further certifies that the motor truck or trailer to be constructed, repaired, cleaned, altered, or improved by you, or to which the subject matter of this purchase is to become a component part, will be used in direct connection with the business of transporting therein persons or property for hire; and that such sale and/or charges are exempt from the Retail Sales Tax under ((the provisions of)) RCW 82.08.0262. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

Dated.....

.....
(name of carrier-purchaser)

.....
(address)

By.....
(title)

(c) **Taxable sales.** ((The following)) Sales that do not qualify for exemption under the provisions of RCW 82.08.0262 or 82.08.0263, ((and)) are subject to the retail sales tax when ((delivery is made in Washington)) sourced to Washington as follows.

(i) ~~Sales ((of equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property for hire. This includes items such as tire chains and tarps which are not custom made for a specific vehicle.~~

~~(ii) Sales of consumable supplies, such as oil, antifreeze, grease, other lubricants, cleaning solvents and ice.~~

~~(iii) Towing charges)), including single payment leases, are sourced under the general sourcing provision of RCW 82.32.730.~~

(ii) All recurring periodic lease payments are sourced to the primary property location provided by the lessee to the lessor.

AMENDATORY SECTION (Amending WSR 97-11-022, filed 5/13/97, effective 6/13/97)

WAC 458-20-17401 Use tax liability for motor vehicles, trailers, and parts used by motor carriers operating in interstate or foreign commerce. (1) **Introduction.** This ~~((section))~~ rule explains the use tax and the use tax exemptions provided by RCW 82.12.0254 ~~((which))~~ that apply to for hire motor carriers operating in interstate or foreign commerce.

(a) Readers may want to refer to WAC 458-20-174. For hire motor carriers should refer to WAC 458-20-174 for a discussion of the retail sales tax and retail sales tax exemptions ~~((which))~~ that apply to motor carriers for the purchase of vehicles and parts under RCW 82.08.0262 and 82.08.0263.

(b) Definitions. Definitions in WAC 458-20-174 apply to this rule.

(c) 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 of the facts and circumstances.

(2) **Use tax.** The use tax complements the retail sales tax by imposing a tax of like amount ~~((upon))~~ on the use within this state as a consumer of any tangible personal property purchased at retail, where the user has not paid retail sales tax with respect to the purchase of the property used. ~~((See also WAC 458-20-178.))~~ For additional information on use tax refer to WAC 458-20-178. If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the retail sales or use tax directly to the department of revenue (department) unless the purchase and/or use is exempt from the retail sales and/or use tax. Use tax is determined by the fair market value of the property when first subject to the use tax. See subsection (5) of this rule.

(3) **Motor vehicles and trailers.** Purchasers of motor vehicles and trailers should note the differences in the conditions and requirements for the retail sales and use tax exemptions provided by RCW 82.08.0263 and 82.12.0254, respectively. The purchaser of a motor vehicle or trailer may qualify for the retail sales tax exemption at the time of purchase, yet incur a use tax liability for the subsequent use of the same vehicle or trailer.

(a) For vehicles purchased in Washington, RCW 82.12.0254 provides a use tax exemption for the use of any motor vehicle or trailer while being operated under the authority of a trip permit and moving from the point of delivery in this state to a point outside this state.

(b) RCW 82.12.0254 also provides a use tax exemption for the use of any motor vehicle or trailer owned by, or operated under contract with, a for hire motor carrier engaged in the business of transporting persons or property in interstate or foreign commerce if both of the following conditions are met:

(i) The user is, or operates under contract with, a holder of a carrier permit issued by the Interstate Commerce Commission (ICC) or its successor agency; and

(ii) The vehicle is used in substantial part in the normal and ordinary course of the user's business for transporting ~~((therein))~~ persons or property for hire across the boundaries of the state.

"In substantial part" means that the motor vehicle or trailer for which exemption is claimed actually crosses Washington boundaries and is used a minimum of twenty-five percent in interstate for hire hauling ~~((for hire))~~.

(c) **Retaining the exemption.** The motor carrier must continue to substantially use the motor vehicle or trailer in interstate for hire hauls during each calendar year to retain the exemption from use tax. This requires that at the start of each calendar year the carrier review the usage of each vehicle and trailer for a "view period" consisting of the previous calendar year. If a particular vehicle was purchased or sold during the year so that the vehicle was not available for use during the entire calendar year, the taxpayer at its option may elect to review the usage during the portion of the year during which the vehicle was owned or may use ~~((a))~~ the twelve-month period beginning with the date of purchase of a vehicle or ending with the date of sale of a vehicle. For example, if a vehicle is traded-in on May 30, ~~((1996))~~ 2013, the taxpayer must meet the substantial use test for this vehicle for either the period January through May ~~((1996))~~ 2013 or for the period June 1, ~~((1995))~~ 2012, through May 30, ~~((1996))~~ 2013. Use tax is due for those vehicles which have not been used substantially in interstate commerce and on which retail sales or use tax has not been paid.

(d) **Maintaining records on a fiscal year basis.** Carriers who maintain their records on a fiscal year basis may, at their option, elect to review the usage of their vehicles using their fiscal year rather than the calendar year. If a fiscal year is used, it must be used for the entire fleet of vehicles, except for view periods based on the acquisition or disposal of vehicles. These carriers may not change to a calendar year basis without first obtaining prior approval from the department.

(e) **Calendar or fiscal year basis only.** Usage will be reviewed on a calendar or fiscal year basis and not on a "moving" twelve-month period. For example, a tractor purchased on August 1, ~~((1996))~~ 2012, will need to have met the substantial use test for the period August through December ~~((1996))~~ 2012, or for the period August 1, ~~((1996))~~ 2012, through July 31, ~~((1997))~~ 2013, the period selected being at the taxpayer's option, and for the calendar year ~~((1997))~~ 2013 and each calendar year thereafter ~~((in order))~~ to retain the use tax exemption.

(f) **Methods for determining if motor vehicles and trailers qualify.** The motor carrier may select one of the methods from those listed below to determine if its motor vehicles and trailers satisfy the substantial use threshold for exemption under RCW 82.12.0254. The particular method must be applied to all trucks, tractors, and trailers within the fleet. Regardless of the method selected, a vehicle will not be considered as used in interstate hauls unless the vehicle actually crosses the boundaries of the state and is used in part outside Washington. The motor carrier may change the method with the prior written consent of the department ~~((of revenue))~~. The methods are:

(i) **Line crossing.** The line crossing method compares the number of interstate for hire hauls made by a particular motor vehicle or trailer to the total number of for hire hauls. It makes no difference whether the for hire hauls are partial or full loads. The motor vehicle or trailer must actually cross the boundaries of this state or be

used for hauls which begin and end outside this state, for the haul to be considered an interstate haul.

(ii) **Mileage.** The mileage method compares the interstate mileage associated with the for hire hauls made by a particular motor vehicle or trailer, to the total mileage associated with its for hire hauls. All mileage associated with a specific haul (~~which~~) that requires the motor vehicle or trailer to actually cross the boundaries of this state, or haul exclusively outside this state, is considered to be interstate mileage. Where a vehicle is returning empty after having delivered an interstate load or is empty on its way to pickup an interstate load, the empty mileage will be considered to be part of the mileage from an interstate haul.

(iii) **Revenue.** The revenue method compares the interstate for hire revenue generated by the particular motor vehicle or trailer to the total for hire revenue generated. The revenue generated by the motor vehicle or trailer actually crossing the boundaries of this state, or hauling exclusively outside this state, is considered to be interstate revenue for the purposes of determining use tax liability. If the motor carrier uses more than one motor vehicle or trailer to transport the cargo, the revenue generated from hauling this cargo must be allocated between the motor vehicles and/or trailers used. For the purposes of determining use tax liability, a vehicle will not be considered as having interstate revenue even if the haul originates or ends outside Washington unless the vehicle actually crosses the boundaries of the state.

(iv) **Other.** Any other method may be used only when approved in advance and in writing by the department (~~of revenue~~).

(g) (~~The following examples show how the methods of determining substantial interstate use would be applied to various situations. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.~~) **Examples.**

(i) Example 1. ARC Trucking picks up a load of cargo in Spokane, Washington and delivers it to the dock in Seattle, Washington, for subsequent shipment to Japan. While ARC may claim an interstate and foreign sales deduction on its excise tax return for the income attributable to this haul if all of the requirements of RCW 82.16.050(8) are met, the haul itself is considered to be intrastate for the purposes of determining whether the (~~tractor/trailer~~) tractor and trailer (tractor-trailer) rig meets the substantial use threshold discussed in RCW 82.12.0254. Both the pickup and delivery points are within the state of Washington.

(ii) Example 2. DMG Express picks up a load of cargo in Yakima, Washington for ultimate delivery in Billings, Montana. The cargo is initially hauled from the Yakima location to DMG's hub terminal in Spokane, Washington by truck A. It is unloaded from truck A at the hub terminal, reloaded on truck B, and delivered to Billings. For the purposes of determining qualification for the use tax exemption provided by RCW 82.12.0254, two hauls have taken place. The haul performed by truck A is considered to be (~~an~~) intrastate (~~haul since~~) because truck A did not cross the borders of Washington, while the haul performed by truck B is considered interstate for purposes of determining continued exemption from use tax on the trucks, even though the entire hauling income may be deductible from the motor transportation tax.

(iii) Example 3. AA Express operates one (~~tractor/trailer~~) tractor-trailer rig, which has previously met the retail sales and use tax exemption requirements. AA verifies compliance with the twenty-

five percent substantial use threshold on a calendar year basis, using the line crossing method. AA makes one hundred for hire hauls within the calendar year. Of these hauls, seventy-one are entirely in Washington, ten are performed entirely outside Washington, and nineteen require AA to cross the borders of Washington. AA Express has not incurred a use tax liability on the ~~((tractor/trailer))~~ tractor-trailer rig as twenty-nine percent of the for hire hauls were interstate in nature.

(iv) Example 4. BDC Hauling operates one ~~((tractor/trailer))~~ tractor-trailer rig ~~((which))~~ that has previously met the retail sales and use tax exemption requirements. BDC verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the mileage method. BDC makes one hundred for hire hauls within the calendar year, for a total of one hundred thousand miles. Included in this mileage figure are the unladen or "empty" miles BDC incurs from delivery points to its terminal. Fifteen of these hauls were interstate in nature and involved laden travel of twenty thousand miles, including the Washington miles of the interstate hauls where the rig made border crossings. BDC's tractor-trailer rig also incurred an additional eight thousand miles as a result of having to drive unladen from the delivery point of an interstate haul to its Washington terminal. BDC Hauling has not incurred a use tax liability for its use of the ~~((tractor/trailer))~~ tractor-trailer rig ~~((Under the mileage method,))~~ as twenty-eight percent of the ~~((tractor/trailer's))~~ tractor-trailer's usage was in interstate hauling.

(v) Example 5. GV Trucking operates one ~~((tractor/trailer))~~ tractor-trailer rig ~~((which))~~ that has previously met the retail sales and use tax exemption requirements. GV verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the revenue method. GV makes one hundred for hire hauls within the calendar year, for which GV earns eighty thousand dollars. Fifteen of these hauls were interstate in nature, for which GV earned twenty thousand dollars. GV Trucking has not incurred a use tax liability for its use of the ~~((tractor/trailer))~~ tractor-trailer rig ~~((Under the revenue method,))~~ as twenty-five percent of GV's usage of the ~~((tractor/trailer))~~ tractor-trailer rig was in interstate hauling.

(vi) Example 6. XYZ Trucking operates a single ~~((tractor/trailer))~~ tractor-trailer rig ~~((which))~~ that has previously met the retail sales and use tax exemption requirements. XYZ picks up two loads of cargo in Seattle, one load for delivery to Kent, Washington, and another for delivery to Portland, Oregon. ~~((Upon))~~ At delivery of the cargo to Kent, XYZ picks up another load for delivery to Portland, Oregon. XYZ has performed three separate hauls, even if the loads are combined on the same tractor-trailer rig. The Seattle to Portland and Kent to Portland hauls are considered interstate hauls, and the Seattle to Kent haul is intrastate. ~~((If using))~~ Under the mileage method, the mileage associated with the Seattle to Portland and Kent to Portland hauls would be ~~((combined))~~ added together to determine total interstate miles, even though the tractor-trailer rig made only one trip to Portland. ~~((If using))~~ Under the revenue method, the revenue generated by the Seattle to Portland and Kent to Portland hauls would be considered interstate. The mileage ~~((and/or))~~ and revenue associated with the Seattle to Kent haul would be considered intrastate.

(4) **Special application to trailers.** Motor carriers must keep appropriate records and determine qualification for the use tax exemption provided by RCW 82.12.0254 for each individual truck and tractor. Motor carriers are encouraged to keep similar records for each indi-

vidual trailer. Where records are maintained to document the use of individual trailers, use tax liability for trailers must be determined on the basis of those records. However, it is recognized that some motor carriers have no system of tracking or documenting the travel of their trailers and it would be an undue burden to require such record-keeping, particularly where a tractor may be used to pull multiple trailers and the trailers are not assigned to a specific tractor. These motor carriers may elect to determine the use tax liability attributable to their use of trailers on the basis of their actual use of the tractors.

(a) Under this method, it is assumed that there is a direct correlation between the use of tractors and the use of trailers. Whenever use tax is incurred on a tractor because of the failure to maintain the twenty-five percent interstate usage, use tax will also be due on one or more trailers. The number of trailers subject to the use tax under this method shall correspond to the fleetwide trailer to tractor ratio. Any trailer to tractor ratio resulting in a fraction shall be rounded up when determining the number of trailers subject to the use tax. For example, if the fleetwide ratio of trailers to tractors is two and one quarter to one, and one tractor fails to maintain the substantial use threshold in a given year, the motor carrier shall incur a use tax liability on three trailers. ~~((However,))~~ If two tractors fail to maintain the substantial use threshold in a given year, the motor carrier shall incur a use tax liability on five trailers.

(b) The trailer or trailers subject to use tax under this method shall be those acquired nearest to the purchase date of the tractor triggering the use tax liability for those trailers meeting the following conditions:

(i) The trailer or trailers are compatible for towing with the tractor upon which use tax is incurred; and

(ii) The trailer or trailers have not previously incurred a retail sales or use tax liability; and

(iii) The trailer or trailers have been actively used in hauling for hire in the year tax liability is incurred.

(c) Under this method of reporting, use tax liability is generally incurred on one or more trailers whenever a tractor is subject to the use tax. If a tractor is purchased with the intent that less than twenty-five percent of the hauls will be across state borders, it will be presumed the tractor will also be pulling a trailer or trailers on which use tax is also due. For example, ABC Trucking has eight tractors and fifteen trailers in its fleet. The tractors and trailers met the exemption from retail sales tax and use tax at the time they were purchased, and it was determined during previous annual reviews that the tractors continued to be substantially used on interstate hauls. However, at the time of the annual review for the just-completed calendar year it was determined that one tractor was not used at least twenty-five percent in interstate hauls. Use tax is due on this tractor. Under this method, use tax is also due on two trailers. The two trailers on which use tax must be reported are the two purchased ~~((most-nearly))~~ closest to the purchase date of the tractor.

(5) **Valuation.** The value of the motor vehicle or trailer subject to the use tax is its fair market value at the time of first use within the review period for which the exemption cannot be maintained. However, because the taxpayer will not know until the close of the period whether the usage met the exemption requirements, the use tax is due and should be reported on the last excise tax return for that review period. For example, a motor carrier who has previously met the

exemption requirements for a particular truck determines this truck no longer was substantially used in interstate hauls during calendar year ~~((1996))~~ 2013. Use tax should be reported on the last tax return filed for ~~((1996))~~ 2013 with the taxable value based on the value of the truck at January 1, ~~((1996))~~ 2013.

(a) **Determining valuation.** The department ~~((of revenue))~~ will accept independent publications containing values of comparable vehicles if those values are generally accepted in the industry as accurately reflecting the value of used vehicles. The department will also consider notarized valuation opinions signed by qualified appraisers and/or dealers as evidence of the fair market value. In the absence of a readily available fair market value, the department will accept a value based on depreciation schedules in effect and used by the department of licensing to determine the value of vehicles for licensing purposes.

~~((The following examples show how use tax liability would be determined in typical situations. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.))~~ **Examples.**

(i) Example 7. ABC Trucking purchased five trailers for use in both interstate and intrastate for hire hauls on January 1, ~~((1996))~~ 2012. All the necessary conditions for exemption under RCW 82.08.0263 were met; delivery was made in Washington, and the trailers were purchased without payment of the retail sales tax. The taxpayer uses the "line crossing" method for determining interstate use.

ABC Trucking keeps a journal showing the origin and destination for each haul ~~((which))~~ that identifies each ~~((truck/tractor))~~ truck or tractor and trailer used on a per unit basis. This journal is reviewed at the end of each calendar year to verify compliance with the statutory provision that motor vehicles and trailers be substantially used for transporting ~~((therein))~~ persons or property for hire across the boundaries of the state. During the first year of use, all five of the trailers met the "substantial use" threshold. However, ~~((in reviewing this journal))~~ for the ~~((1997))~~ 2013 calendar year, ABC Trucking determines that two of the trailers failed to meet the twenty-five percent "substantial use" threshold. ABC Trucking must remit use tax directly to the department on its ~~((December 1997))~~ last excise tax return filed for 2013, based on the fair market values of the two trailers as of January 1, ~~((1997))~~ 2013. ~~((Since))~~ Because the taxpayer maintained specific usage records for each trailer, the "substantial use" in interstate hauling must be met by each trailer for which exemption is claimed. If detailed records for usage of trailers had not been kept, use tax liability of the trailers would have been based on the tractors. In any event, use tax liability may not be determined based on the overall experience of a fleet of vehicles. If a vehicle is used both in hauling for hire and in hauling the carrier's own products, the "substantial use" is determined solely on the usage in for hire hauling ~~((for hire))~~.

(ii) Example 8. DB Carriers is a motor carrier ~~((which))~~ that is engaged in both intrastate and interstate for hire hauls. DB purchases and first uses a truck in Washington on January 1, ~~((1997))~~ 2012. All the necessary conditions for exemption under RCW 82.08.0263 were met; delivery was made in Washington, and the truck was purchased without payment of the retail sales tax. DB Carriers uses the "line crossing" method ~~((for determining))~~ to determine interstate use.

DB Carriers keeps a journal showing the origin and destination for each haul (~~((which))~~) that identifies each truck used on a per unit basis. This journal is reviewed at the end of the (~~((1997))~~) 2012 calendar year, and DB determines that the truck failed to meet the twenty-five percent "substantial use" threshold. DB Carriers must remit use tax directly to the department on its (~~((December 1997))~~) last excise tax return filed for 2012, based on the fair market value of the truck as of January 1, (~~((1997))~~) 2012. DB Carriers may not compute the use tax liability based (~~((upon))~~) on the December 31, (~~((1997))~~) 2012, fair market value as the vehicle never satisfied the substantial interstate use provision of RCW 82.12.0254.

(6) **Leased vehicles.** The use tax exemption requirements are the same for leased vehicles as for purchased vehicles. Motor vehicles and trailers, leased without operator are exempt from the use tax if the user is, or operates under contract with, a holder of a permit issued by the ICC or its successor agency and the vehicle is used in substantial part in the normal and ordinary course of the user's business for transporting (~~((therein))~~) persons or property for hire across the boundaries of the state. This requires that the leased vehicle be used a minimum of twenty-five percent in interstate hauls. The taxpayer may elect to use either the fiscal year of the business or a calendar year to determine if the leased vehicle was used substantially in interstate hauls for hire. Where the vehicle lease does not begin or end at the start of the calendar year (or fiscal year if the business uses a fiscal year view period), the same requirements apply to leased vehicles as to purchased vehicles (see subsection (3)(c) of this (~~((see-))~~) rule).

(a) **Substantial use requirement not met.** If the leased vehicle does not meet the substantial use requirement during the "view period," the use tax applies (~~((only to the portion of the))~~) to each lease payment (~~((which is for))~~) within the "view period" where there was use in Washington ((during the "view period." See the examples in subsection (6)(b) of this section. Mileage is an acceptable basis for determining instate and out of state use. For the purposes of determining instate and out of state use of leased vehicles or trailers where use tax is determined to be due, all miles traveled in Washington by the leased vehicle are instate miles, notwithstanding that they may be associated with an interstate haul. The motor carrier must maintain accurate records of actual instate and out of state use to substantiate any claim that a portion of any lease payment was exempt of use tax because of out of state use)). Use tax will be determined first for each "view period(~~((-))~~)," then for each periodic lease period within the "view period." For example, if a truck was leased on a monthly basis for the years (~~((1996 and 1997))~~) 2013 and 2014 and failed to meet the substantial use requirement in (~~((1996))~~) 2013, but met the requirement in (~~((1997))~~) 2014, use tax would only be due for the monthly payments for January and September of 2013 if those are the only two months during which usage in Washington ((which)) occurred in ((1996)) 2013.

(b) (~~((The following examples show how this method would be applied to typical situations. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.))~~) **Examples.**

(i) Example 9. BG Hauling (~~((is))~~), a for hire carrier (~~((which on January 1, 1996))~~), enters into a lease agreement for a truck without operator on January 1, 2013. All the necessary conditions for the retail sales and use tax exemptions for the first year of the lease were

met. BG Hauling verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis.

BG determines that this truck failed to meet the twenty-five percent substantial use threshold for calendar year ~~((1997))~~ 2014. Use tax will be due beginning with the period for which the exemption was not met, in this case beginning with January ~~((1997))~~ 2014. However, BG Hauling may report use tax only on ~~((that portion of))~~ each lease payment ~~((attributable to))~~ in which payment period there was actual in-state use, provided it maintains accurate records substantiating the truck's in-state and out-of-state activity. ((Only mileage incurred while actually outside Washington will be considered out-of-state mileage.)) If BG Hauling continues to lease this truck in ~~((1998))~~ 2015, usage will again be reviewed for that period and use tax may or may not be due for the ~~((1998))~~ 2015 lease payments, depending on whether the vehicle was used substantially in interstate hauls during that year.

(ii) Example 10. MG Inc. is an equipment distributor which, in addition to hauling its own product to customers, is engaged in hauling for hire activities. MG is a holder of an ICC permit. MG enters into a lease agreement for a truck without operator on January 1, ~~((1996))~~ 2013. All conditions for retail sales and use tax exemption are satisfied for the first year of the lease.

Based upon the truck's for hire hauling activities during the ~~((1997))~~ 2014 calendar year, MG determines that the use of the truck failed to satisfy the twenty-five percent substantial use threshold. MG must remit use tax ~~((upon))~~ on the amount of lease payments made during ~~((1997))~~ 2014 at the time it files its last tax return ~~((in 1997))~~ for 2014. Provided accurate records are maintained to substantiate in-state and ~~((of))~~ out-of-state use, MG may remit use tax ~~((only upon that portion of))~~ on each lease payment ~~((attributable to))~~ in which the payment period there was actual in-state use. While only the hauling for hire activities are reviewed when determining whether the truck satisfies the substantial interstate use threshold, once it is established the exemption cannot be maintained, the use tax liability is based upon all in-state activity, including the motor carrier's hauling of its own product.

(7) **Component parts.** RCW 82.12.0254 also provides a use tax exemption for the use of tangible personal property ~~((which))~~ that becomes a component part (including purchases of services related to that component part) of any motor vehicle or trailer used for transporting ~~((therein))~~ persons or property for hire. This exemption is available only for motor vehicles or trailers owned by, or operated under contract with, a person holding a carrier permit issued by the ~~((Interstate Commerce Commission))~~ ICC or its successor agency authorizing transportation by motor vehicle across the boundaries of this state. Since carriers are required to obtain these permits only when the carrier is hauling for hire, the exemption applies only to tangible personal property purchased for vehicles ~~((which))~~ that are used in hauling for hire. The exemption for component parts will apply even if the parts are for use on a motor vehicle or trailer ~~((which))~~ that is used less than twenty-five percent in interstate hauls for hire, provided the vehicle is used in hauling for hire.

~~((a))~~ For the purposes of this section, the term "component parts" means any tangible personal property which is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries, paint, permanently affixed decals, and tires. "Component parts" includes the axle

and wheels, referred to as "converter gear" or "dollies," which is used to connect a trailer behind a tractor and trailer. "Component parts" can include tangible personal property which is attached to the vehicle and used as an integral part of the motor carrier's operation of the vehicle, even if the item is not required mechanically for the operation of the vehicle. It includes cellular telephones, communication equipment, fire extinguishers, and other such items, whether themselves permanently attached to the vehicle or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the vehicle in a definite and secure manner with these items attached to the bracket when not in use and intended to remain with that vehicle. It does not include antifreeze, oil, grease, and other lubricants which are considered as consumed at the time they are placed into the vehicle, even though required for operation of the vehicle. It does include items such as spark plugs, oil filters, air filters, hoses and belts.

(b) The following items do not qualify for exemption from the use tax under the provisions of RCW 82.12.0254:

(i) Equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property for hire; and

(ii) Consumable supplies, such as oil, grease, other lubricants, cleaning solvents and ice.))

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