



# 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 458-20-177 (Rule 177) Sales of motor vehicles, campers, and trailers to nonresident consumers.

**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 177 explains the tax exemption from retail sales tax for sales of motor vehicles, campers, and trailers to bona fide nonresidents of Washington. The Department is considering revisions to the rule to remove the requirement for sellers to obtain a corporate nonresident permit number and the obligation that buyers obtain such a permit. Some updating and removal of outdated language will also be done.

**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](mailto:GayleC@dor.wa.gov), or mailing address: 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  
4<sup>th</sup> Floor Large Exec 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:** August 21, 2014 **Time:** 10:00 A.M.

<b>Date</b>	July 2, 2014
<b>Name</b>	Dylan Waits
<b>Signature</b>	
<b>Title</b>	Rules Coordinator

<b>CODE REVISER USE ONLY</b>	
OFFICE OF THE CODE REVISER STATE OF WASHINGTON FILED	
<b>DATE:</b>	July 02, 2014
<b>TIME:</b>	10:09 AM
<b>WSR</b>	14-14-129

AMENDATORY SECTION (Amending WSR 08-16-041, filed 7/29/08, effective 8/29/08)

**WAC 458-20-177 Sales of motor vehicles, campers, and trailers to nonresident consumers.** (1) **Introduction.** This ~~((section))~~ rule applies to any sale of a vehicle to a consumer who is not a resident of the state, including nonresident military personnel temporarily stationed in Washington. The ~~((section))~~ rule describes the different business and occupation (B&O) and retail sales tax consequences that result from vehicle sales to nonresidents, particularly the sales tax exemption provided by RCW 82.08.0264. It also describes the documentation a seller must retain to demonstrate that a sale is exempt.

(a) For information on use tax liability associated with vehicles, see WAC 458-20-178, Use tax.

(b) For sales of vehicles to Indians or Indian tribes and required documentation, see WAC 458-20-192, Indians-Indian country.

(c) Questions regarding vehicle licensing or registration requirements should be directed to the department of licensing.

(2) **What is a "vehicle"?** For the purposes of this ~~((section))~~ rule, a "vehicle" is any vehicle of a type that may be lawfully licensed under chapter ~~((46.16))~~ 46.16A RCW for operation on a public highway in this state, except that the term does not include any machinery and implements for use in conducting a farming activity subject to RCW 82.08.0268. The term "vehicle" includes, but is not limited to, a car, truck, camper, trailer, bus, motorhome, and motorcycles equipped for road use. It does not include farm tractors, bicycles, mopeds, motorized scooters, snowmobiles, or vehicles that are manufactured for exclusively off-road use.

(3) **What are the tax consequences when a vehicle sold to a nonresident is delivered in-state?** A sale of a vehicle to a nonresident where the vehicle is delivered in-state is exempt from retail sales tax if the sale meets the requirements of RCW 82.08.0264. In all other cases where the vehicle is delivered to the buyer in this state, the retail sales tax applies and must be collected at the time of sale, unless otherwise exempt by law. The mere fact that the buyer may be or claims to be a nonresident or that the buyer intends to, and actually does, use the vehicle in some other state does not, by itself, entitle the buyer to the exemption. In any case where the seller licenses or registers the vehicle in Washington on the buyer's behalf, the retail sales tax applies.

In computing the B&O tax liability of persons engaged in the business of selling vehicles, no deduction is allowed for a sale made to a nonresident for use outside this state if the nonresident buyer takes delivery in Washington. This is true even if the buyer is entitled to an exemption from the retail sales tax.

(a) **Exemption requirements.** If a vehicle is delivered within this state to a nonresident buyer, retail sales tax does not apply if the vehicle is purchased for use outside this state and, immediately upon delivery, the vehicle:

(i) Is removed from the state under the authority of a trip permit issued by the department of licensing pursuant to RCW ~~((46.16.160))~~ 46.16A.320 or any agency of another state that has authority to issue similar permits; or

(ii) Is registered and licensed in the state of the buyer's residence, will not be used in this state more than three months, and will not be legally required to be registered and licensed in this state.

If the vehicle bears Washington state license plates, the seller must remove the Washington plates before delivering the vehicle and retain evidence of that removal to avoid liability for collection and payment of the retail sales tax.

~~(b) Seller obligations; documentation. ((For sales completed before July 22, 2007, the seller must properly document the following facts:~~

~~(i) The buyer is a nonresident of Washington;~~  
~~(ii) The vehicle is for use outside this state;~~  
~~(iii) The vehicle is to be removed from the seller's premises under the authority of either:~~

~~(A) A trip permit; or~~  
~~(B) Valid license plates issued for that vehicle by the state of the buyer's residence, with the plates actually affixed to the vehicle upon final delivery; and~~

~~(iv) If the vehicle bears Washington state license plates, the seller has removed the Washington plates before delivery.~~

~~(c) Seller obligations effective July 22, 2007. For sales completed on or after July 22, 2007,) The seller must retain the ((following)) documents((, which)) described in (b)(i) through (iv) of this subsection if the buyer is a natural person, or (b)(ii) through (iv) of this subsection if the buyer is not a natural person (e.g., the buyer is a corporation). These documents must be made available upon request by the department of revenue (department):~~

~~(i) A copy of the buyer's currently valid out-of-state driver's license or other official picture identification issued by a jurisdiction other than Washington state;~~

~~(ii) A copy of any one of the following documents, on which there is an out-of-state address for the buyer:~~

~~((•)) (A) A current residential rental agreement;~~  
~~((•)) (B) A property tax statement from the current or previous year;~~

~~((•)) (C) A utility bill, dated within the previous two months;~~

~~((•)) (D) A state income tax return from the previous year;~~

~~((•)) (E) A voter registration card;~~

~~((•)) (F) A current credit report; or~~

~~((•)) (G) Any other document determined by the department to be acceptable, with buyer's street address, such as:~~

~~((A)) (I) A bank statement issued within the previous two months;~~

~~((B)) (II) A government check issued within the previous two months;~~

~~((C)) (III) A pay check issued within the previous two months;~~

~~((D)) (IV) Mortgage documents of current personal residence;~~

~~((E)) (V) Current vehicle insurance card;~~

~~((F)) (VI) Letter or other documentation issued by the postmaster within the previous two months;~~

~~((G)) (VII) Other government document issued within the previous two months;~~

~~(iii) A witnessed declaration in the form designated by the department, completed and signed by the buyer, and stating that the buyer's purchase meets the requirements of this section (buyer's affidavit); and~~

~~(iv) A seller's certification, in the form designated by the department, that either a vehicle trip permit was issued or the vehicle was immediately registered and licensed in another state as required by RCW 82.08.0264.~~

To comply with these requirements, the seller must retain a properly completed buyer's affidavit and seller's certificate (in-state delivery). ~~((If the nonresident buyer is a corporation, the seller must also retain the number of the corporate nonresident permit))~~ See the department's web site dor.wa.gov for affidavit and certificate forms.

~~((d))~~ (c) **What are the consequences for noncompliance?**

(i) Any seller that makes sales without collecting the tax to a person who does not provide the documents required under ~~((e))~~ (b) of this subsection, and any seller who fails to retain the documents required under ~~((e))~~ (b) of this subsection for the period prescribed by RCW 82.32.070 is personally liable for the amount of tax due.

(ii) Any seller that makes sales without collecting the retail sales tax ~~((under))~~ pursuant to RCW 82.08.0264 and who has actual knowledge that the buyer's documentation required by ~~((e))~~ (b) of this subsection is fraudulent is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the buyer and the seller are liable for any penalties and interest assessable under chapter 82.32 RCW.

**(4) What are the tax consequences when a vehicle sold to a non-resident is delivered out-of-state?** A sale of a vehicle to a nonresident where the seller delivers the vehicle out-of-state is exempt from retail sales tax. If the vehicle is delivered to the buyer outside the state, the seller may also deduct the sale amount from the gross proceeds of sales for B&O tax purposes. The deductible amount must be included in the gross income reported on the excise tax return and then deducted on the return to determine the amount of taxable income. The deduction must be identified on the deduction detail page of the return as an "interstate and foreign sales" deduction.

**(a) Requirements.** If a vehicle is delivered outside the state to a nonresident buyer, retail sales tax does not apply if:

(i) The seller, as required by the contract of sale, delivers possession of the vehicle to the buyer at a point outside Washington; and

(ii) The vehicle is not licensed or registered in this state. If the vehicle bears Washington state license plates, the seller must remove the Washington plates before delivery and retain evidence of that removal to avoid liability for collection and payment of the retail sales tax.

**(b) Seller obligations; documentation.** The seller must properly document the following facts:

(i) The buyer's out-of-state address;

(ii) The vehicle is not licensed or registered in this state or the Washington state license plates have been removed from the vehicle before delivery;

(iii) Under the terms of the sales agreement, the seller is required to deliver the vehicle to the buyer at a point outside this state; and

(iv) The out-of-state delivery was actually made by the seller or by a common carrier acting as the seller's agent.

To comply with these requirements, the seller must retain a properly completed buyer's certificate and seller's certificate (out-of-state delivery). The seller's certificate must be signed by the person who actually delivers the vehicle to the buyer at the out-of-state location and may be completed only after delivery occurs.

~~((c) **Documentation when delivery is made by common carrier.** When a vehicle is delivered outside the state by common carrier acting as the seller's agent, no buyer's certificate or seller's certificate is required. Instead, the seller must retain:~~

~~(i) Evidence that the vehicle's license plates (if licensed in Washington) were removed; and~~

~~(ii) A signed copy of the bill of lading issued by the carrier. The bill of lading must show the seller as the consignor and indicate that the carrier agrees to transport the vehicle to a point outside the state.)~~

**(5) What forms should be used to document an exempt sale?** ((The)) Depending on where the vehicle is delivered determines which two documents: "Buyer's Affidavit((7))" and "Seller's Certificate In-State Delivery," or "Buyer's Certificate Out-of-State Delivery((7))" and "Seller's Certificate Out-of-State Delivery" properly completed are necessary to substantiate exempt sales to nonresidents. Do not send the documents to the department, but keep them as part of the seller's permanent records for five years. Without this documentation, claims that a transaction was exempt from tax will be disallowed.

Copies of the forms can be obtained:

- From the department's ((internet)) web site at ((http://))dor.wa.gov ((• By facsimile by calling fast fax at 360-705-6705 or 800-647-7706 (using menu options)) or

- By writing to:

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

Documents in substantially the same form as the department's forms will be accepted in lieu of the department's documents.

(a) **In-state delivery.** A sale with in-state delivery requires a completed buyer's affidavit and seller's certificate-in-state delivery.

(b) **Delivery out-of-state by seller.** A sale with out-of-state delivery by a seller requires a completed buyer's certificate and seller's certificate-out-of-state.

(c) **Delivery out-of-state by common carrier.** When a vehicle is delivered outside the state by common carrier acting as the seller's agent, the seller must retain:

(i) Evidence that the vehicle's license plates (if licensed in Washington) were removed; and

(ii) A signed copy of the bill of lading issued by the carrier. The bill of lading must show the seller as the consignor and indicate that the carrier agrees to transport the vehicle to a point outside the state; or

(iii) A seller's certificate out-of-state delivery. The person who delivers the vehicle signs the seller's certificate and provides the name of the hauling company.

**(6) What are a seller's obligations to verify a buyer's statements on nonresidency?**

(a) ((Prior to July 22, 2007, completion of a buyer's affidavit documents the exempt nature of a sale under RCW 82.08.0264 unless there are facts that negate the presumption that the seller relied on the buyer's affidavit in good faith.)) The seller((, however,)) must exercise a reasonable degree of care in accepting statements regarding a buyer's nonresidence. If delivery occurs in-state, the seller must

examine and retain a copy of at least one form of documentary evidence showing the buyer's out-of-state residence. Lack of good faith on the part of the seller or lack of the exercise of the degree of care required is indicated, for example, in the following circumstances:

- (i) If the seller knows that the buyer is living in Washington;
- (ii) If the buyer gives a Washington address for the purpose of financing the purchase of the vehicle;
- (iii) If, at the time of sale, arrangements are made for future servicing of the vehicle in the seller's shop and a Washington address or telephone number is shown for the shop customer; or
- (iv) If the seller has ready access to any other information that discloses that the buyer ~~((may be))~~ is a resident of Washington.

(b) **What if the department questions the authenticity of the information provided by the buyer?** ~~((For sales completed on or after July 22, 2007,))~~ If the department has information indicating the buyer is a Washington resident, or if the addresses for the buyer shown on the documentation provided under subsection (3)~~((+e))~~ (b) of this ~~((section))~~ rule are not the same, the department may contact the buyer to verify the buyer's eligibility for the exemption provided by RCW 82.08.0264. If the department subsequently determines the buyer was not eligible for an exemption, the department will pursue collection of the retail sales tax from the buyer. The seller will not be liable for the retail sales tax except as provided in subsection (3)~~((+d)+ii))~~ (c) of this ~~((section))~~ rule.

(7) **Do military personnel qualify for the nonresident exemptions?** A member of the armed services who is temporarily stationed in Washington is presumed to be a nonresident, unless that person was a resident of this state when enlisted or inducted. This presumption does not apply to a civilian employee of the armed services. Nonetheless, a sale to a nonresident member of the armed forces must meet all of the statutory requirements for a retail sales tax exemption or B&O tax deduction. If a vehicle sold to a member of the armed forces will remain in Washington for more than three months, retail sales tax is due on the sale, even if the vehicle is registered in the home state of the armed forces member.

(a) **Military temporary license.** In addition to the exemptions provided under RCW 82.08.0264, a member of the armed forces may alternatively qualify for the retail sales tax and use tax exemptions provided by RCW ~~((46.16.480))~~ 46.16A.340 if the member obtains a forty-five day nonresident military temporary ~~((license))~~ permit from the department of licensing ~~((under RCW 46.16.460))~~ and satisfies the requirements of RCW ~~((46.16.480))~~ 46.16A.340.

(b) **Additional documentation required.** In addition to the documentation otherwise required by this ~~((section))~~ rule, for a sale to a member of the armed forces a seller must retain a copy of military orders showing that the buyer:

- (i) Is temporarily stationed in Washington and will leave within three months of the date of purchase; or
- (ii) Is permanently reassigned to a new duty station outside Washington and will leave within three months of the date of purchase.

(c) **Military personnel of NATO-member nations.** Pursuant to treaty, a member of the armed forces of any NATO-member nation who is stationed in Washington is considered to be a nonresident for purposes of the RCW 82.08.0264 retail sales tax exemption. The buyer must meet all otherwise applicable requirements for exemption. In addition, the seller must retain proof of the buyer's military assignment in Washington as a member of a NATO-member nation's armed forces.

(8) **Are sales to residents of noncontiguous states exempt from Washington retail sales tax?** RCW 82.08.0269 exempts purchases of tangible personal property from the retail sales tax if the property is purchased for use in states, territories, and possessions of the United States that are not contiguous with any other state. However, the exemption only applies if, as a necessary incident to the contract of sale, the seller delivers the property to the purchaser or the purchaser's designated agent at the usual receiving terminal of the carrier selected to transport the goods, under such circumstances that it is reasonably certain that the goods will be transported directly to a destination in a noncontiguous state, territory, or possession.

RCW 82.08.0269 applies to the sale of motor vehicles when the requirements stated above are met. Therefore, in addition to being exempt from retail sales tax under RCW 82.08.0264 (discussed above), a sale of a motor vehicle to a resident of a noncontiguous state, territory, or possession may qualify for exemption under RCW 82.08.0269. If so, the sale is exempt from retail sales tax but does not qualify for a B&O tax deduction. For more information on the requirements of the RCW 82.08.0269 exemption, including the documentation requirements, see WAC 458-20-193, Inbound and outbound interstate sales of tangible personal property.

(9) **Are sales to ~~((residents))~~ nonresidents of this state ~~((s with no sales tax))~~ exempt from Washington retail sales tax?** RCW 82.08.0273 exempts purchases of tangible personal property from the retail sales tax if the purchaser is a resident of another state or possession or a province of Canada that does not impose a retail sales tax or use tax of three percent or more. That statute does not apply to purchases of vehicles. Because RCW 82.08.0264 more specifically applies to the sale of vehicles, it takes precedence over RCW 82.08.0273. A ~~((resident))~~ nonresident of ((another)) this state ((or possession or a province of Canada that does not impose a retail sales tax or use tax of three percent or more)) may purchase and take delivery of a vehicle in Washington free of retail sales tax only if the person meets the requirements of RCW 82.08.0264 ~~((or 82.08.0269))~~. For sales to residents of noncontiguous states, territories, and possessions see RCW 82.08.0269.

(10) **Examples.** The following examples 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. In each example concluding that the sale qualifies for a retail sales tax and/or B&O tax exemption, the Dealer must retain the documents required in subsection (3)(b) of this rule.

(a) Buyer purchases a vehicle from Dealer. Buyer provides identification indicating that Buyer is a resident of California and provides California license plates for the vehicle. However, Buyer also states that he intends to use the vehicle in the state of Washington for four months before returning to California. Buyer does not qualify for a sales tax exemption because Buyer will use the vehicle for more than three months in the state.

(b) Buyer provides proof of residency in Idaho; there are no contrary facts regarding Buyer's residency. Buyer completes the buyer's affidavit, stating that the vehicle is for use out-of-state. Buyer obtains and uses a trip permit issued under authority of RCW ~~((46.16.160))~~ 46.16A.320 to remove the vehicle from Washington. The Dealer completes a seller's certificate and certifies that the Dealer removed the Washington license plates before delivering the vehicle to

Buyer. This sale qualifies for the retail sales tax exemption but not the B&O tax deduction.

(c) Buyer is a Washington resident, employed by out-of-state Corporation X. On behalf of Corporation X, Buyer purchases and accepts in-state delivery of a vehicle from Dealer. The vehicle will be used as a company car out-of-state and will not be used or garaged in Washington. Payment is made by corporate check. Buyer provides a trip permit for transport of the vehicle out of Washington. This sale qualifies for the retail sales tax exemption (but not for the B&O tax deduction) notwithstanding the Washington residency of its employee. ((The Dealer must record in its records the number of the corporate nonresident permit.))

(d) Buyer is a resident of Alaska and purchases a vehicle from Dealer in Washington. The sales contract requires Dealer to deliver the vehicle to Buyer in Anchorage, Alaska. Before shipping the vehicle, Dealer removes the vehicle's Washington state license plates and retains a photocopy of the plates as evidence of the removal. Seller ships the vehicle to Alaska by common carrier. Seller retains a signed copy of the bill of lading, indicating the Seller as consignor and the Buyer as consignee. This sale qualifies for the retail sales tax exemption and a B&O tax deduction.

(e) Buyer is a resident of Alaska and purchases a vehicle from Dealer in Washington. Dealer delivers the vehicle to the Buyer at dockside in Seattle to be shipped to Anchorage, Alaska by common carrier. Dealer retains the exemption certificate and ((dock receipt)) documentation required by WAC 458-20-193. This sale qualifies for the retail sales tax exemption provided by RCW 82.08.0269 but not for a B&O tax deduction.

(f) Buyer is a member of the armed forces and provides a copy of her orders showing that she is temporarily stationed in Washington. Before entering military service, buyer resided in another state. Buyer purchases a vehicle from Dealer and licenses it in her home state, but intends to keep the vehicle in this state for over three months. This sale does not qualify for any exemption or deduction. If the vehicle were to be removed from the state within three months, the sale would qualify for the RCW 82.08.0264 retail sales tax exemption but not for a B&O tax deduction.

(g) Buyer owns homes in Washington and Arizona, spending summers in Washington and winters in Arizona. In October, Buyer purchases a vehicle from Dealer, asserting that he will immediately drive the vehicle to Arizona and license it in that state. Buyer presents an Arizona driver's license for identification and provides a trip permit to remove the vehicle from Washington. Dealer is aware that Buyer lives in Washington for a significant portion of each year. In such a case, the sale would not qualify for the retail sales tax exemption. Under these facts, Buyer has dual residency in Washington and Arizona for tax purposes.

(h) Buyer purchases a motorcycle from Dealer in Vancouver, Washington. The motorcycle is equipped for use on public highways. Buyer provides an Oregon driver's license and asserts that the motorcycle will be licensed in Oregon. Buyer also states that the motorcycle will only be used outside of Washington. Buyer places the motorcycle in the back of a truck for transport to Oregon. This sale does not qualify for any exemption or deduction. To qualify for the sales tax exemption, RCW 82.08.0264 requires the Buyer to obtain a trip permit or provide license plates from another state before removing the vehicle from Washington.

(11) **Buyer obligations when claiming exemption.** It is the buyer's responsibility to provide the seller with valid identification that entitles the buyer to purchase a motor vehicle, trailer, or camper exempt from retail sales tax as provided by RCW 82.08.0264.

(a) A buyer making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a seller, in order to purchase a motor vehicle, trailer, or camper without paying retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any buyer making tax exempt purchases under RCW 82.08.0264 by displaying proof of identification not his or her own, or counterfeit identification, with intent to violate the provisions of RCW 82.08.0264 is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

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