



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 458-20-178 (Rule 178) *Use tax.*

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 178 explains who is responsible for remitting use tax, and when and how to remit it. It also explains the imposition of use tax as it applies to the use of tangible personal property within Washington when the property was not subject to retail sales tax at the time of acquisition.

The Department is considering an amendment to Rule 178 to:

- Update and clarify information to conform with existing law;
- Reformat the rule to provide the information in a more useful manner.

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, 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
4th Floor 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.
Date: October 23, 2013 **Time:** 10:30 a.m.

Date	September 17, 2013
Name	Alan R. Lynn
Signature	
Title	Assistant Director

CODE REVISER USE ONLY	
OFFICE OF THE CODE REVISER STATE OF WASHINGTON FILED	
DATE:	September 17, 2013
TIME:	10:50 AM
WSR	13-19-075

AMENDATORY SECTION (Amending WSR 87-01-050, filed 12/16/86)

WAC 458-20-178 Use tax and the use of tangible personal property.

~~((1) Nature of the tax. The use tax supplements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any article of tangible personal property purchased at retail or acquired by lease, gift, repossession, or bailment, or extracted, produced or manufactured by the person so using the same, where the user, donor or bailor has not paid retail sales tax under chapter 82.08 RCW with respect to the property used.~~

~~(2) In general, the use tax applies upon the use of any tangible personal property, the sale or acquisition of which has not been subjected to the Washington retail sales tax. Conversely, it does not apply upon the use of any property if the sale to the present user or to the present user's donor or bailor has been subjected to the Washington retail sales tax, and such tax has been paid thereon. Thus, these two methods of taxation stand as complements to each other in the state revenue plan, and taken together, provide a uniform tax upon the sale or use of all tangible personal property, irrespective of where it may have been purchased or how acquired.~~

~~(3) When tax liability arises. Tax liability imposed under the use tax arises at the time the property purchased, received as a gift, acquired by bailment, or extracted or produced or manufactured by the person using the same is first put to use in this state. The terms "use," "used," "using," or "put to use" include any act by which a person takes or assumes dominion or control over the article and shall include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within the state. Tax liability arises as to that use only which first occurs within the state and no additional liability arises with respect to any subsequent use of the same article by the same person. As to lessees of tangible personal property who have not paid the retail sales tax to their lessors, liability for use tax arises as of the time~~

~~rental payments fall due and is measured by the amount of such rental payments.~~

~~(4) Persons liable for the tax. The person liable for the tax is the purchaser, the extractor or manufacturer who commercially uses the articles extracted or manufactured, the bailor or donor and the bailee or donee if the tax is not paid by the bailor or donor, and the lessee (to the extent of the amount of rental payments to a lessor who has not collected the retail sales tax). A lessor who leases equipment with an operator is deemed a user and is liable for the tax on the full value of the equipment.~~

~~(5) The law provides that the term "sale at retail" means, among other things, every sale of tangible personal property to persons taxable under the classifications of public road construction, government contracting, and service and other business activities of the business and occupation tax. Hence, persons engaged in such businesses are liable for the payment of the use tax with respect to the use of materials purchased by them for the performance of those activities, when the Washington retail sales tax has not been paid on the purchase thereof, even though title to such property may be transferred to another either as personal or as real property. Persons engaged in the types of businesses referred to in this paragraph are expressly included within the statutory definition of the word "consumer." (See RCW 82.04.190.) Also liable for tax is any person who distributes or displays or causes to be distributed or displayed any article of tangible personal property, the primary purpose of which is to promote the sale of products and services except newspapers and except printed materials over which the person has taken no direct dominion and control. (See RCW 82.12.010(5).)~~

~~(6) Lessors and lessees. Any use tax liability with respect to leased tangible personal property will be that of the lessee and is limited to the amount of rental payments paid or due the lessor. However, when boats, motor vehicles, equipment and similar property are rented under conditions whereby the lessor itself supplies an operator or crew, the lessor itself is the user and the use tax is applicable to the value of the property so used.~~

~~(7) Exemptions. Persons who purchase, produce, manufacture, or acquire by lease or gift tangible personal property for their own use~~

~~or consumption in this state, are liable for the payment of the use tax, except as to the following uses which are exempt under RCW 82.12.0251 through 82.12.034 of the law:~~

~~(a) The use of tangible personal property brought into the state of Washington by a nonresident thereof for use or enjoyment while temporarily within the state, unless such property is used in conducting a nontransitory business activity within the state; or~~

~~(b) The use by a nonresident of a motor vehicle or trailer which is currently registered or licensed under the laws of the state of the nonresident's residence and which is not required to be registered or licensed under the laws of this state, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060; or~~

~~(c) The use of household goods, personal effects, and private automobiles by a bona fide resident of this state or nonresident members of the armed forces who are stationed in this state pursuant to military orders, if such articles were acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time such person entered this state.~~

~~(i) Use by a nonresident. The exemptions set forth in (a) and (b) of this subsection, do not extend to the use of articles by a person residing in this state irrespective of whether or not such person claims a legal domicile elsewhere or intends to leave this state at some future time, nor do they extend to the use of property brought into this state by a nonresident for the purpose of conducting herein a nontransitory business activity.~~

~~(ii) The term "nontransitory business activity" means and includes the business of extracting, manufacturing, selling tangible and intangible property, printing, publishing, and performing contracts for the constructing or improving of real or personal property. It does not include the business of conducting a circus or other form of amusement when the personnel and property of such business regularly moves from one state into another, nor does it include casual or incidental business done by a nonresident lawyer, doctor or accountant.~~

~~(d) The use of any article of tangible personal property purchased at retail or acquired by lease, by bailment or by gift if the~~

~~sale thereof to or the use thereof by the present user or its bailor or donor has already been subjected to retail sales tax or use tax and such tax has been paid by the present user or by its bailor or donor; or in respect to the use of property acquired by bailment when tax has been paid by the bailee or any previous bailee, based on reasonable rental value as provided by RCW 82.12.060, equal to the amount of tax multiplied by the value of the article used at the time of first use, at the tax rate then applicable, or in respect to the use by a bailee of property acquired prior to June 9, 1961, by a previous bailee from the same bailor for use in the same general activity.~~

~~(e) The use of any article of tangible personal property the sale of which is specifically taxable under the public utility tax.~~

~~(f) In respect to the use of any airplane, locomotive, railroad car, or water craft used primarily in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or used primarily in commercial deep sea fishing operations outside the territorial waters of the state, and;~~

~~(g) In respect to the use of tangible personal property which becomes a component part of any such airplane, locomotive, railroad car, or water craft, and in respect to the use by a nonresident of this state of any motor vehicle or trailer used exclusively in transporting persons or property across the boundaries of this state and in intra-state operations incidental thereto when such motor vehicle or trailer is registered and licensed in a foreign state; also in respect to the use by a nonresident of this state of any motor vehicle or trailer so registered and licensed and used within this state for a period not exceeding fifteen consecutive days when the user has furnished the department of revenue with a written statement containing the following information:~~

~~(i) Name of registered owner.~~

~~(ii) Name of the foreign state in which motor vehicle or trailer is registered.~~

~~(iii) License number.~~

~~(iv) Make and model.~~

~~(v) Purpose of use in Washington.~~

~~(vi) Date of first use in Washington.~~

~~(vii) Date last used in Washington.~~

~~(h) For reasons approved by the department of revenue, fifteen additional days may be granted consecutive to the original period of use. Application for such additional use must be made in writing in advance of the expiration of the original period of use and must set out the justification for and the reason why such additional time should be allowed.~~

~~(i) This exemption is not available to persons performing construction or service contracts in this state but is limited to casual or isolated use by a nonresident for servicing of its own facilities.~~

~~(j) For the purpose of this exemption the term "nonresident" shall include a user who has one or more places of business in this state as well as in one or more other states, but the exemption for nonresidents shall apply only to those vehicles which are most frequently dispatched, garaged, serviced, maintained, and operated from the user's place of business in another state, and;~~

~~(k) In respect to the use by the holder of a carrier permit issued by the Interstate Commerce Commission of any motor vehicle or trailer 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 this state if the first use of which within this state is actual use in conducting interstate or foreign commerce. Also in respect to use by subcontractors to such interstate carriers, (i.e., persons operating their own vehicles under leases with operator) and;~~

~~(l) In respect to the use of any motor vehicle or trailer while being operated under the authority of a trip permit issued by the department of motor vehicles pursuant to RCW 46.16.160 and moving upon the highways from the point of delivery in this state to a point outside this state, and;~~

~~(m) In respect to the use of tangible personal property which becomes a component part of any motor vehicle or trailer used by the holder of a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state. Also in respect to use by subcontractors to such interstate carriers (i.e., persons operating their own vehicles under leases with operator).~~

~~(n) The use of any article of tangible personal property which the state is prohibited from taxing under the constitution of the state or under the constitution or laws of the United States;~~

~~(o) The use of motor vehicle fuel used in aircraft by the manufacturer thereof for research, development, and testing purposes, and special fuel purchased in this state upon which a refund is obtained as provided in RCW 82.38.180(2), and motor vehicle and special fuel if:~~

~~(i) The fuel is used for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(9); or~~

~~(ii) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(8); or~~

~~(iii) The fuel is taxable under chapter 82.36 or 82.38 RCW: Provided, That the use of motor vehicle and special fuel upon which a refund of the applicable fuel tax is obtained shall not be exempt under this subsection, and the director of licensing shall deduct from the amount of such tax to be refunded the amount of use tax due and remit the same each month to the department of revenue.~~

~~(p) In respect to the use of any article of tangible personal property included within the transfer of the title to the entire operating property of a publicly or privately owned public utility, or a complete operating integral section thereof by the state or a political subdivision thereof in conducting any business defined in RCW 82.16.010 (1) through (11).~~

~~(q) The use of tangible personal property (including household goods) which has been used in conducting a farm activity, but only when that property was purchased from a farmer at an auction sale held or conducted by an auctioneer upon a farm and not otherwise.~~

~~(r) The use of tangible personal property by corporations which have been incorporated under any act of the Congress of the United States of America and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine,~~

~~fire, floods, and other national calamities, and to devise and carry on measures for preventing the same. (The Red Cross is the only existing organization that qualifies for this exemption.)~~

~~(s) The use of purebred livestock for breeding purposes where said animals are registered in a nationally recognized breed association, and in respect to the use of cattle and milk cows used on the farm.~~

~~(t) The use of poultry in the production for sale of poultry or poultry products.~~

~~(u) The use of fuel by the extractor or manufacturer thereof when used directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the same.~~

~~(v) The use of motor vehicles, equipped with dual controls, which are loaned to accredited schools and used in connection with their driver training programs.~~

~~(w) The use by a bailee of any article of tangible personal property which is entirely consumed in the course of research, development, experimental and testing activities conducted by the user, provided the acquisition or use of such articles by the bailor was not subject to sales or use tax.~~

~~(x) The use by residents of this state of motor vehicles and trailers acquired outside this state and used while such persons are members of the armed services and are stationed outside this state pursuant to military orders, but this exemption does not apply to the use of motor vehicles or trailers acquired less than thirty days prior to the discharge or release from active duty of such person from the armed services. This exemption is not permitted to persons called to active duty for training periods of less than six months.~~

~~(y) The use of sand, gravel, or rock to the extent of the cost of or charges made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling such sand, gravel, or rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or a city, and such sand, gravel, or rock is (a) either stockpiled in said pit or quarry for placement or is placed on the street, road, place or highway of the county or city by the county or city itself (i.e., by its own employees), or (b) sold by the county or city to a~~

~~county or a city at actual cost for placement on a publicly owned street, road, place, or highway. This exemption shall not apply to the use of such material to the extent of the cost of or charge made for such labor and services, if the material is used for other than public road purposes or is sold otherwise than as here indicated.~~

~~(z) The use of form lumber by any person engaged in the construction, repairing, decorating or improving of new or existing buildings or other structures under, upon or above real property of or for consumers: Provided, That such lumber is used or to be used first by such person for the molding of concrete in a single such contract, project or job and is thereafter incorporated into the product of that same contract, project or job as an ingredient or component thereof.~~

~~(aa) The use of wearing apparel only as a sample for display for the purpose of effecting sales of goods represented by such sample.~~

~~(bb) The use of tangible personal property held for sale and displayed in single trade shows for a period not in excess of thirty days, the primary purpose of which is to promote the sale of products or services.~~

~~(cc) The use of pollen.~~

~~(dd) The use of the personal property of one political subdivision by another political subdivision directly or indirectly arising out of or resulting from the annexation or incorporation of any part of the territory of one political subdivision by another.~~

~~(ee) The use of prescription drugs, including the use by the state or a political subdivision or municipal corporation thereof of drugs to be dispensed to patients by prescription without charge.~~

~~(ff) The use of returnable containers for beverages and foods, including but not limited to soft drinks, milk, beer, and mixers.~~

~~(gg) The use of insulin, prosthetic devices, or orthotic devices prescribed for an individual by a chiropractor, osteopath, or physician, ostomic items, medically prescribed oxygen, and hearing aids which are prescribed or are dispensed and fitted by a licensee under chapter 18.35 RCW.~~

~~(hh) The use of food products for human consumption (see WAC 458-20-244), including the use of livestock for personal consumption as food.~~

~~(ii) The use of ferry vessels of the state of Washington or of local governmental units in the state of Washington in transporting pedestrian or vehicular traffic within and outside the territorial waters of the state. Also, the use of tangible personal property which becomes a component part of any such ferry vessel.~~

~~(jj) Alcohol that is sold in this state for use solely as fuel in motor vehicles, farm implements and machines, or implements of husbandry. This exemption expires December 31, 1986.~~

~~(kk) The use of vans used regularly as ride sharing vehicles, as defined in RCW 46.74.010(3), by not less than seven persons, including passengers and driver, if the vans are exempt under the motor vehicle excise tax for thirty six consecutive months beginning within thirty days of application for exemption under the use tax. This exemption expires January 1, 1988.~~

~~(ll) The use of used mobile homes as defined in RCW 82.45.032 and the use of mobile homes acquired by renting or leasing for more than thirty days, except for short term transient lodging.~~

~~(mm) The use of special fuel purchased in this state upon which a refund of special fuel tax is obtained as provided in RCW 82.38.180(2), by reason of such fuel having been purchased for use by interstate commerce carriers outside this state. Also, the use of motor vehicle fuel or special fuel by private, nonprofit transportation providers who are entitled to fuel tax refund or exemption under chapter 82.36 or 82.38 RCW.~~

~~(nn) The lease of irrigation equipment if:~~

~~(i) The irrigation equipment was purchased by the lessor for the purpose of irrigating land controlled by the lessor;~~

~~(ii) The lessor has paid tax under RCW 82.08.020 or 82.12.020 in respect to irrigation equipment;~~

~~(iii) The irrigation equipment is attached to the land in whole or in part; and~~

~~(iv) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land to the lessee and is used solely on such land.~~

~~(oo) The use of computers, computer components, computer accessories, or computer software irrevocably donated to any public or pri-~~

~~vate school or college, as defined in chapter 84.36 RCW, in this state.~~

~~(pp) The use of semen in the artificial insemination of live stock.~~

~~(qq) The use of feed by persons for the cultivating or raising for sale of fish entirely within confined rearing areas on the persons own land or on land in which the person has a present right of possession.~~

~~(rr) The use by artistic or cultural organizations of:~~

~~(i) Objects of art;~~

~~(ii) Objects of cultural value;~~

~~(iii) Objects to be used in the creation of a work of art, other than tools; or~~

~~(iv) Objects to be used in displaying art objects or presenting artistic or cultural exhibitions or performances.~~

~~(ss) The use of used floating homes as defined in RCW 82.45.032 upon which sales tax or use tax has once been paid.~~

~~(tt) The use of feed, seed, fertilizer, and spray materials by persons raising agricultural or horticultural products for sale at wholesale including the use of feed in feeding animals at public live-stock markets.~~

~~(uu) The use of prepared meals or food products used in prepared meals provided to senior citizens, disabled persons, or low income persons by not-for-profit organizations organized under chapter 24.03 or 24.12 RCW.~~

~~(vv) The use of property to produce ferrosilicon for further use in the production of magnesium for sale, where such property directly reacts chemically, with ingredients of the ferrosilicon.~~

~~(ww) In respect to lease payments by a seller/lessee to a purchaser/lessor after April 3, 1986, under a sale/leaseback agreement covering property used by the seller/lessee primarily in the business of canning, preserving, freezing, or dehydrating fresh fruits, vegetables, and fish; nor in respect to the purchase amount paid by the lessee pursuant to an option to purchase such property at the end of the lease term: Provided, That the seller/lessee paid the retail sales tax or use tax at the time of its original acquisition of the property.~~

~~(8) In addition to the exemptions listed earlier, the use tax does not apply to the value of tangible personal property traded in on the purchase of tangible personal property of like kind used in this state. (See WAC 458-20-247.) Also, the use tax does not apply to the use of precious metal bullion or monetized bullion acquired under such conditions that the retail sales tax would not apply to such things in this state. (See WAC 458-20-248.)~~

~~(9) See WAC 458-20-24001 and 458-20-24002 for provisions for certain use tax deferrals on materials, labor, and services rendered in the construction of qualified buildings, machinery, and equipment used in new manufacturing and research/development facilities.~~

~~(10) RCW 82.08.0251 provides expressly that the exemption therein with respect to casual sales shall not be construed as exempting from the use tax the use of any article of tangible personal property acquired through a casual sale. Thus, while casual sales made by persons who are not registered with the department of revenue are exempt from the retail sales tax (for the obvious reason that the procedure for collection of that tax is impractical in those cases), the use of property acquired through such sales is not exempt from the use tax, except as provided in RCW 82.12.0251 through 82.12.034.~~

~~(11) See also WAC 458-20-106 regarding the use tax on the use of articles purchased at a casual sale.~~

~~(12) Credit. When property purchased elsewhere is brought into this state for use or consumption the use tax will apply upon the use thereof, but a credit is allowed for the amount of sales or use tax paid by the user or its bailor or donor on such property to any other state or political subdivision thereof, the District of Columbia, or any foreign country, prior to the use of the property in this state.~~

~~(13) Value of the article used. The tax is levied and collected on an amount equal to the value of the article used by the taxpayer. The term "value of the article used" is defined by the law as being the total of the consideration paid or given by the purchaser to the seller for the article used plus any additional amounts paid by the purchaser as tariff or duty with respect to the importation of the article used. In case the article used was extracted or produced or manufactured by the person using the same or was acquired by gift or was sold under conditions where the purchase price did not represent the~~

~~true value thereof, the value of the article used must be determined as nearly as possible according to the retail selling price, at the place of use, of similar products of like quality, quantity and character. In case the articles used are acquired by bailment, the value of the use of the articles so used shall be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character. In case the articles used are acquired by lease or rental, use tax liability is measured by the amount of rental payments to a lessor who has not collected the retail sales tax.~~

~~(14) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used shall be determined by: (a) The retail selling price of such new or improved product when first offered for sale; or (b) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale. See: RCW 82.04.450, WAC 458-20-112.~~

~~(15) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than ninety days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used shall be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used.~~

~~(16) Returns and registration. Persons subject to the payment of the use tax, and who are not required to register or report under the provisions of chapters 82.04, 82.08, 82.16, or 82.28 RCW, are not required to secure a certificate of registration as provided under WAC 458-20-101. As to such persons, returns must be filed with the department of revenue on or before the fifteenth day of the month succeeding the end of the period in which the tax accrued. Forms and instructions for making returns will be furnished upon request made to the department at Olympia or to any of its branch offices.~~

~~(17) See WAC 458-20-221 for liability of certain selling agents for collection of use tax.)~~ (1) **Introduction.** This rule provides gen-

eral use tax-reporting information for consumers. It discusses who is responsible for remitting use tax, and when and how to remit the tax. The rule also explains the imposition of use tax as it applies to the use of tangible personal property within this state when the acquisition of the property was not subject to retail sales or deferred sales tax. For information on the difference between retail sales tax and deferred sales tax, see Excise Tax Advisory (ETA) 3097 "Deferred Sales Tax" on the department's internet site at dor.wa.gov.

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

(b) **Additional information available.** For information on use tax exemptions please refer to chapter 82.12 RCW, and the department of revenue's internet site. When appropriate, this rule refers the reader to applicable statutes and rules. In addition, the reader may wish to refer to the following:

(i) WAC 458-20-145, Local sales and use tax, provides information on sourcing local sales and use taxes.

(ii) WAC 458-20-15503, Digital products, provides information on sales and use tax liability on digital products such as: Digital goods, including digital audio works, digital audio-visual works, and digital books; digital automated services; digital codes used to obtain digital goods or digital automated services; and remote-access software.

(iii) WAC 458-20-169, Nonprofit organizations, provides information on a use tax exemption for donated items to a nonprofit charitable organization.

(iv) WAC 458-20-17803, Use tax on promotional material, provides information about the use tax reporting responsibilities of persons who distribute or cause the distribution of promotional material, except newspapers, the primary purpose of which is to promote the sale of products or services in Washington.

(v) WAC 458-20-190, Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments, provides tax reporting information for businesses doing business with the United States.

(vi) WAC 458-20-192, Indians-Indian country, provides information on the use of tangible personal property by Indians and Indian tribes and the use of property acquired on Indian lands by non-Indians.

(vii) WAC 458-20-257, Warranties and service contracts, provides information on tax responsibilities of persons selling or performing services covered by warranties, service contracts, and mixed agreements for tangible personal property.

(2) **What is use tax.** Use tax complements the retail sales tax, and in most cases mirrors the retail sales tax. Articles of tangible personal property used or certain services purchased in Washington are subject to use tax when the state's retail sales tax has not been paid, or where an exemption is not available. Tangible personal property or services used or purchased by the user in any manner are taxable including, but not limited to:

- Purchases directly from out-of-state sellers;
- Purchases through the internet, telemarketing, mail order; or
- Acquisitions at casual or isolated sales.

Use tax should be sourced to the place of first use unless a specific exemption applies. See WAC 458-20-145 for sourcing of local taxes.

(3) **"Use" defined.** For purposes of this rule, "use," "used," "using," or "put to use" have their ordinary meaning and include any act by which a person takes or assumes dominion or control over the article (as a consumer). (See RCW 82.12.010.) Subsequent use of the same article by the same person does not generally result in an additional use tax liability.

(4) **Measure of tax - Value of article used.** Use tax generally is levied and collected on an amount equal to the value of the article used by the taxpayer. RCW 82.12.010 defines the term "value of the article used" as the purchase price of the article. There are a number of specific situations where the "value of the article used" may be different than the amount of consideration paid or given by the buyer to the seller.

(a) **When the value of the article used is the purchase price.** The term "purchase price" has the same meaning as "selling price." The selling price is the total amount of consideration, except trade-in property of like kind, including cash, credit, property, and services,

for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise. The selling price, and therefore the "value of the article used" also includes delivery charges. Delivery charges are charges made by the seller for preparing and delivering tangible personal property to a location designated by the buyer and includes, but are not limited to, charges for transportation, shipping, postage, handling, crating, and packing. (See RCW 82.08.010 and 82.12.010.)

(b) **When the purchase price does not represent true value.** When an article is sold under conditions in which the purchase price does not represent the true value, the "value of the article used" is to be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character. (See RCW 82.12.010.) For additional information regarding the measure of tax in these situations, refer to WAC 458-20-112, Value of products.

A comparison/examination of arm's length sales transactions is required when determining the value of the article used on the basis of the retail selling price of similar products. An arm's length sale generally involves a transaction negotiated by unrelated parties, each acting in his or her own self-interest.

(i) In an arm's length sales transaction, the value placed on the property by the parties to the transaction may be persuasive evidence of the true value of the property. Where there is a conflict regarding the true value of tangible personal property between sales documents, entries in the accounting records and/or value reported for use tax purposes, the department often looks to the person's accounting records as an indication of the minimum value of capitalized property. Neither the department nor the taxpayer is necessarily bound by this value if it is established that the entry in the books of account does not fairly represent the true value of the article used.

(ii) Some arm's length sales transactions involve multiple pieces of property or different types of property (such as when both real and personal property are sold). While the total sales price may represent a true value for the property in total, the values allocated to the specific components may not in and of themselves represent true values for those components. This is especially apparent when the values as-

signed by the parties to the sales transaction vary from those entered into the accounting records and/or reported for use tax purposes. In such cases, the value of the article used for the purpose of the use tax must be determined as nearly as possible according to the retail selling price, at the place of use, of similar products of like quality and character.

(c) **Property acquired and used outside Washington before use occurs in Washington.** The purchase price of property acquired and used outside Washington before being used in this state may not represent the property's true value. Under these circumstances, the value of article used is the retail selling price at place of use of similar products of like quality and character as of the time the article is first used in Washington. This is frequently referred to as the fair market value of the property.

(d) **Imported property.** When property is imported from outside the United States for use in Washington state, the value of the article used includes any amount of tariff or duty paid with respect to importation.

(e) **Articles produced for commercial or industrial use.** A person who extracts or manufactures products or by-products for commercial or industrial use is subject to use tax and the business and occupation (B&O) tax on the value of products or by-products used. "Commercial or industrial use" is the use of products, including by-products, as a consumer by the person who extracted or manufactured the products or by-products. See WAC 458-20-134, Commercial or industrial use and WAC 458-20-136, Manufacturing, processing for hire, fabricating.

Tax applies even if the person is not generally in the business of extracting, producing, or manufacturing the products, or the extracting or manufacturing activity is incidental to the person's primary business activity. Thus, a clothing retailer who manufactures signs or other materials for display purposes incurs a liability even though the clothing retailer is not otherwise in the business of manufacturing signs and other display materials for sale.

(i) The extractor or manufacturer is responsible for remitting retail sales or use tax on all materials used while developing or producing an article of commercial or industrial use. This includes materials that are not components of the completed article.

(ii) The value of the extracted or manufactured article is subject to use tax when the article is completed and used. The measure of use tax due for the completed article may be reduced by the value of any materials actually incorporated into that article if the manufacturer or extractor previously paid sales or use tax on the materials. See subsection (4)(g) of this rule for an explanation of the measure of tax for a completed prototype.

(f) **Bailment.** For property acquired by bailment, the "value of the article used" is an amount representing a reasonable rental for the use of the bailed article, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character. (See RCW 82.12.010.) If the nature of the article is such that it can only be used once, the reasonable rental value is the full value of the article used. See also WAC 458-20-211, Leases or rentals of tangible personal property, bailments and ETA 3013 *Rental Value of a One-Use Article*.

(g) **Prototypes.** The value of the article used with respect to an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product is:

- The retail selling price of such new or improved product when first offered for sale; or
- The value of materials incorporated into the prototype in cases where the new or improved product is not offered for sale. (See RCW 82.12.010.)

(h) **Articles manufactured and used in the production of products for the department of defense.** When articles are manufactured and used in the production of products for the department of defense, use tax is due except where there is an exemption. The value of the article used with respect to an article manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States is the value of the ingredients of the manufactured or produced article. (See RCW 82.12.010.) However, refer to WAC 458-20-13601, Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment to determine if such articles qualify for exemption under RCW 82.12.02565.

(i) **Property temporarily brought into Washington for business use.** In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used must be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under chapter 82.08 or 82.12 RCW upon the full value of the article used, as defined in RCW 82.12.010. For additional information about the use tax exemption available to nonresidents bringing property into this state see RCW 82.12.0251.

The term "nontransitory business activity" means and includes the business of extracting, manufacturing, selling tangible and intangible property, printing, publishing, and performing contracts for the constructing or improving of real or personal property. It does not include the business of conducting a circus or other form of amusement when the personnel and property of such business regularly moves from one state into another, nor does it include casual or incidental business done by a nonresident lawyer, doctor or accountant.

(i) **Rental value.** The nature of property may make determining a reasonable rental value for use tax difficult because it may not be possible to find similar products of like quality and character. In such situations, monthly reasonable rental value may be determined based on depreciation plus one percent (per month) of the purchase price. For the purpose of this computation, depreciation should be computed on a straight-line basis with an assumption that there is no salvage value. The life of the asset must be based on "book" life rather than an accelerated life that might be used for federal tax purposes. This calculation applies even if the asset is fully depreciated.

(ii) **Example.** A piece of equipment that originally cost \$100,000 and has a book life of forty-eight months results in a monthly rental value of \$3,083 $((100,000/48) + (100,000 \times .01))$. This monthly value applies even if the asset is fully depreciated or is greater or less than the actual depreciation used for federal tax purposes. A lesser value can be used if the taxpayer retains documentation supporting the lesser value and that value is based on rental values.

(j) **Special provisions for vessel dealers and manufacturers.** The value of an article used for a vessel held in inventory and used by a vessel dealer or vessel manufacturer for personal use is the reasonable rental value of the vessel used. This value applies only if the vessel dealer or manufacturer can show that the vessel is truly held for sale and that the dealer or manufacturer is and has been making good faith efforts to sell the vessel. (See RCW 82.12.802.) This may result in a vessel manufacturer incurring multiple use tax liabilities with respect to multiple uses of the same vessel.

The use of a vessel by a vessel dealer or vessel manufacturer for certain purposes is not subject to use tax. For specific information on these exemptions see RCW 82.12.800 and 82.12.801.

(5) **Who is liable for the tax?** RCW 82.12.020 imposes use tax upon every person using tangible personal property or certain retail services as a consumer in the state of Washington. The law does not distinguish between persons using property (or certain retail services) for business or personal use. Thus, a Washington resident purchasing personal items via the internet or through a mail-order catalogue has the same legal responsibility to report and remit use tax as does a corporation purchasing office supplies. The rate of the use tax is the same as the retail sales tax rate in the location where the property is used. Refer to WAC 458-20-145, Local sales and use tax for further discussion about determining where use occurs.

(a) **When tax liability arises.** Use tax is owed at the time the tangible personal property is purchased, received as a gift, acquired by bailment, or extracted or produced or manufactured by the person using the same is first put to use in this state, unless an exemption is available. Lessees of tangible personal property, who have not paid the retail sales tax to their lessors, owe use tax at the time rental payments fall due and is measured by the amount of the rental payments.

(b) **Reporting and remitting payment to the department of revenue.**

(i) **Registered taxpayers.** Persons registered with the department under RCW 82.32.030 to do business in Washington should use their excise tax return to report and remit use tax.

(ii) **Unregistered persons.** Persons not required to be registered with the department should use a Consumer Use Tax Return to report and remit use tax. The Consumer Use Tax Return is available by:

(A) Using the department's internet site at dor.wa.gov;

(B) Calling the department's telephone information center at 1-800-647-7706; or

(C) Requesting the form at any of the department's local field offices.

The completed Consumer Use Tax Return, with payment, is due on or before the twenty-fifth day of the month following the month in which the tax liability occurs. For example, a person acquires clothing without payment of the retail sales tax during August. The Consumer Use Tax Return and the tax are due by September 25th.

The return and payment can be submitted electronically using the department's online system at dor.wa.gov, mailed, or delivered to any of the department's local field offices.

(6) **How does use tax differ from the retail sales tax.** There are circumstances where the law does not provide a use tax exemption to complement a retail sales tax exemption. For instance, RCW 82.08.02573 provides a retail sales tax exemption for certain fund-raising sales made by nonprofit organizations or, effective July 1, 2010, libraries (see chapter 106, section 214, Laws of 2010). Because there is no complementary use tax exemption, the buyer/user is still responsible for remitting use tax on his or her use of the purchased property.

Another instance where there is no complementary use tax exemption to the retail sales tax exemption is in RCW 82.08.0251. This exemption provides a retail sales tax exemption for articles acquired in casual sales transactions, if the seller is not required to be registered with the department. Because there is no complementary use tax exemption, the buyer/user is responsible for remitting the use tax on his or her use of the purchased property. For example, if a person purchases furniture through a classified ad from a homeowner, the buyer is responsible for reporting and paying the use tax although the sale is exempt from retail sales tax.

For information on the difference between retail sales tax and deferred sales tax see ETA 3097.

(7) **Exceptions.** The law provides certain exceptions to the imposition of tax on a single event. These exceptions occur when the law provides a method of determining the measure of tax different than the full value of the article being used.

(a) **Destroyed property.** The mere destruction or discarding of tangible personal property as unusable or worthless is usually not considered a taxable "use." The following examples identify a number of facts and then state a conclusion.

Example 1. AA Computer Software (AA) has some obsolete inventory that will no longer sell as an updated version of the software is now available for purchase. AA decides to throw away this inventory even though it has never been used. As the software was never used, use tax is not owed on the destroyed inventory.

Example 2. WW Dealer purchases a used vehicle for resale. WW Dealer publicizes an upcoming sale by airing a television commercial in which WW Dealer destroys the vehicle. WW Dealer's destruction of the vehicle for publicity purposes is considered use by a consumer. The vehicle is subject to use tax sourced at the location where WW Dealer destroys the vehicle.

(b) **Tangible personal property acquired by gift or donation.** The use of property acquired by gift or donation is subject to the use tax, unless the person gifting or donating the property previously paid or remitted Washington retail sales or use tax on the purchase or use of the property. (See RCW 82.12.020.) However, a credit for tax paid in another jurisdiction is available if documentation of tax paid is provided. See subsection (8) of this rule for additional information.

Use tax does not apply when the same property is gifted or donated back to the original giftor or donor if the original giftor or donor previously paid the retail sales tax or use tax.

Example. John purchases a vehicle, pays retail sales tax on the purchase, and gifts the vehicle to Mary. Mary's use of the vehicle is not subject to use tax because John paid sales tax when he purchased the vehicle. After two years, Mary returns the vehicle to John. John's use of the vehicle is not subject to use tax because he paid sales tax when he originally purchased the vehicle. However, use tax is due if

Mary gifts or donates the vehicle to a person other than John because Mary has not previously paid retail sales or use tax.

(c) **Tangible personal property put to both an exempt and taxable use.** If property is first used for an exempt or nontaxable purpose and is later used for a nonexempt or taxable purpose, use tax is due when the property is used for the nonexempt or taxable purpose. For instance, RCW 82.12.0251 provides a use tax exemption for the temporary use within Washington of watercraft brought in by certain nonresidents. (See WAC 458-20-238, Sales of watercraft to nonresidents—Use of watercraft in Washington by nonresidents for a detailed explanation of the exemption requirements.) However, use tax is due if the nonresident exceeds the temporary use threshold or the nonresident subsequently becomes a Washington resident.

(d) **Intervening use of property purchased for resale.** Persons purchasing tangible personal property for resale in the regular course of business may purchase the property at wholesale without paying retail sales tax provided the property is not put to intervening use. (See RCW 82.04.050 and 82.04.060.)

A buyer who purchases taxable property at wholesale and subsequently puts the property to intervening use is subject to either the retail sales tax (commonly referred to as "deferred retail sales tax") or use tax, unless a specific use tax exemption applies to the intervening use. The tax applies even if the property is at all times held out for sale and is in fact later sold. Use tax is due even if the intervening use is the result of an unforeseen circumstance, such as when property is purchased for resale, the customer fails to satisfy the terms of the sales agreement, and the property is used until another customer is found. See WAC 458-20-102 Reseller permits regarding tax-reporting requirements when a person purchases property for both resale and consumption.

(e) **Using inventory to promote sales.** Intervening use does not include the use of inventory for floor or window display purposes if that merchandise is subsequently sold as new merchandise. Likewise, intervening use does not include the use of inventory for demonstration purposes occurring with efforts to sell the same merchandise if that merchandise is subsequently sold as new merchandise. The fact that the selling price may be discounted because the property is shop

worn from display or demonstration is not, by itself, controlling for the purposes of determining whether intervening use has occurred.

Evidence that property has been put to intervening use includes, but is not limited to, the following:

(i) **Property not sold as new merchandise.** Intervening use occurs if, after use of the property for display or demonstration purposes, the property can no longer be sold as new merchandise. An indication that intervening use has occurred is if property is without a new model warranty if the sale of the property normally includes such a warranty.

(ii) **Capitalizing demonstrator or display property.** The capitalization and depreciation of property is evidence of intervening use. Thus, there is a rebuttable presumption that intervening use occurs if the accounting records identify the property as a demonstrator or as display merchandise. The burden is on the person making such entries in the accounting records to substantiate any claims the property was not put to intervening use.

(iii) **Loaning property to promote sales.** Intervening use includes loaning property to a customer or potential customer for the purpose of promoting sales of other products. For example, intervening use occurs if a coffee manufacturer and/or distributor loans brewing equipment to a customer to promote coffee sales, even if the equipment is subsequently sold to the same or different customer. In this example, the coffee manufacturer and/or distributor loaning the equipment would owe use tax on the full value of the equipment. If the manufacturer and/or distributor had not paid use tax, the customer would owe use tax on the fair market value.

(f) **Effect of the trade-in exclusion.** The exclusion for the value of trade-in property from the measure of tax applies only if the trade-in property is of the same general type or classification as the property for which it was traded-in. There is no requirement that Washington's retail sales or use tax be previously paid on the trade-in property. There is also no requirement that the property subject to use tax be acquired in Washington, or that the user be a Washington resident at the time he or she acquired the property. For additional information refer to WAC 458-20-247, Trade-ins, selling price, sellers' tax measure.

(8) Credit for taxes paid in other jurisdictions. RCW 82.12.035 provides a credit against Washington's use tax for legally imposed retail sales or use taxes paid by the purchaser to: Any other state, possession, territory, or commonwealth of the United States, or any political subdivision of a state, the District of Columbia, or any foreign country or political subdivision of a foreign country. (See RCW 82.56.010.)

(a) This use tax credit is available only if the present user, or his or her bailor or donor, has documentation that shows the retail sales or use tax was paid with respect to such property, extended warranty, digital products, digital codes, or service defined as a retail sale in RCW 82.04.050 to the other taxing jurisdiction.

(b) This credit is not available for other types of taxes such as, but not limited to, value-added taxes (VATs).

(c) For the purposes of allocating state and local use taxes, the department first applies the credit against the amount of any use tax due the state. Any unused portion of the credit is then applied against the amount of any use tax due to local jurisdictions. RCW 82.56.010, Multistate Tax Compact, Article V. Elements of Sales and Use Tax Laws.

(9) No apportionment of use tax liability. Unless specifically provided by law, the value of the article or use tax liability may not be apportioned even though the user may use the property both within and without Washington, or use the property for both taxable and exempt purposes. For example, a construction company using an airplane for traveling to and from its Washington office and out-of-state job sites must remit use tax on the full value of the airplane, even if the airplane was purchased and delivery taken outside Washington. There is no apportionment of this value even though the airplane is used both within and outside of Washington. See ETA 3077 *Use Tax in Relation to Use of Private Airplanes for Business within and without the State.*