



# 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 458-20-187 (Rule 187) ~~Coin-operated vending machines, amusement devices and service machines.~~ Tax responsibility of persons owning and/or operating vending machines, amusement devices, and service machines.

**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:**

The Department is considering a revision to Rule 187 to recognize vending machines, amusement devices, and service machines now take payments in other forms than by coin. In addition,

- A listing of other rules that the reader may find helpful would be added;
- Examples added;
- General updating and renumbering the rule 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](mailto: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  
4<sup>th</sup> 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 no later than 3 days before the meeting date.*

**Date:** July 22, 2015      **Time:** 10:00 A.M.

**Date** June 16, 2015

**Name** Dylan Waits

**Signature**

**Title**  
Rules Coordinator

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE:** June 16, 2015

**TIME:** 11:39 AM

**WSR 15-13-110**

AMENDATORY SECTION (Amending WSR 86-18-022, filed 8/26/86)

**WAC 458-20-187 ((Coin-operated)) Tax responsibility of persons owning and/or operating vending machines, amusement devices, and service machines.** (1) **Introduction.** This rule explains the taxability of income from vending machines, amusement devices, and service machines that operate after accepting payment. It does not apply to income from sales of digital goods dispensed by vending machines.

Readers may want to refer to other rules for additional information, including those in the following list:

- (a) WAC 458-20-102 Reseller permits.
  - (b) WAC 458-20-108 Selling price—Credit card service fees, foreign currency, discounts, patronage dividends.
  - (c) WAC 458-20-131 Gambling activities.
  - (d) WAC 458-20-15503 Digital products.
  - (e) WAC 458-20-165 Laundry, dry cleaning, linen and uniform supply, and self-service and coin-operated laundry services.
  - (f) WAC 458-20-178 Use tax and the use of tangible personal property.
  - (g) WAC 458-20-185 Tax on tobacco products.
  - (h) WAC 458-20-186 Tax on cigarettes.
  - (i) WAC 458-20-243 Litter tax.
  - (j) WAC 458-20-244 Food and food ingredients.
- (2) **Definitions.** ((As used herein the term))

(a) **Vending machines.** For the purpose of this rule "vending machines" means machines ((which)) that, through the insertion of ((a coin)) payment, will return to the patron a predetermined specific article of merchandise or provide facilities for installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers. It includes machines which vend photographs, toilet articles, cigarettes, and confections ((as well as machines which provide laundry and cleaning services)). Vending machines also include machines that provide car washes, allow the operation of vacuum equipment, and dispense air or water.

((+2)) (b) **Amusement devices.** The term "amusement devices" means those devices and machines ((which)) that, through the insertion of ((a coin)) payment, will permit the patron to play a game. It includes slot and pinball machines and those machines or devices ((which)) that permit the patron to see, hear, or read something of interest.

((+3)) (c) **Service machines.** The term "service machines" means any ((coin-operated)) machines through which payments are made, other than those defined as "vending machines" or "amusement devices." It includes, for example, scales and luggage lockers, but does not include ((coin-operated)) machines used in the conduct of a public utility business, such as telephones and gas meters((; also excluded are shuffleboards and pool games)).

((+4)) (d) **Place of business.** For the purpose of this rule, place of business includes, but is not limited to, any vending machine through which sales are made.

(3) **Business and occupation (B&O) tax.**

(a) **Retailing.** Persons operating vending machines are engaged in a retailing business and must report and pay tax under the retailing B&O tax classification ((with respect to)) on the gross proceeds of sales. The retailing B&O tax classification applies to gross proceeds from the operation of air hockey, billiards, pool, foosball, darts,

shuffleboard, ping pong, and similar games. Retailing also includes the gross proceeds from locker rentals found in amusement park, theme park and water park facilities.

~~((5))~~ **(b) Service and other business activities.** Persons operating amusement devices, ~~((except))~~ other than air hockey, foosball, darts, ping pong, shuffleboard, pool, ((and billiard games)) billiards, and similar games, are taxable under the service and other business activities B&O tax classification on the gross receipts therefrom.

~~((6))~~ Persons engaged in operating shuffleboards or games of pool or billiards are taxable under the retailing classification on the gross receipts therefrom and are responsible for collecting and reporting to the department the retail sales tax measured by the gross receipts therefrom.

~~(7))~~ Persons operating service machines are taxable under the service and other business activities B&O tax classification ((upon)) on the gross ((income)) receipts received from the operation of such machines.

~~((8))~~ **(4) License to use real property.** When ~~((coin-operated))~~ machines are placed at a location owned or operated by a person other than the owner of the machines, under any arrangement for compensation to the location operator ((of the location, the person operating)), the location operator has granted a license to use real property ~~((and will be))~~ to the owner of the machines. The location operator is responsible for ((reporting and paying tax upon his)) remitting tax on its gross compensation ((therefor)) under the service and other business activities B&O tax classification.

~~((9))~~ **(5) Failure to pay tax.** Where the owner of amusement devices, which are placed at the location of another, has failed to pay the ~~((gross receipts))~~ B&O tax and/or retail sales tax due, the department of revenue (department) may proceed directly against the location operator ((of the location)) for full payment of all tax due.

~~((10))~~ **(6) Retail sales tax.** The retail sales tax applies to the sale of merchandise through vending machines and ~~((persons owning and operating))~~ operators of such machines are liable for the payment of ((such)) the tax. ((However, see WAC 458-20-244 for vending machine sales of food.)) For practical purposes such persons are authorized to absorb the amount of the tax on the individual sales and to pay directly to the department the retail sales tax on the total amount received from such machines.

~~(11)~~ Effective March 11, 1986, on all retail sales through vending machines the tax need not) Retail sales tax also applies to sales from the operation of air hockey, billiards, pool, foosball, darts, shuffleboard, ping pong, and similar games.

Retail sales tax does not need to be stated separately from the selling price or collected separately from the buyer when sales are through vending machines. ((+))See RCW 82.08.050.((+)) The ((seller)) operator may deduct the tax from the total amount received in the machines to arrive at the net amount ((which)) that becomes the measure of the tax.

~~((12))~~ For practical purposes, operators are authorized to absorb the amount of the tax on the individual sales and directly pay the department the retail sales tax on the total amount received from such machines.

(a) Food and food ingredients. Retail sales and use tax exemptions for food and food ingredients do not apply to sales of food and food ingredients dispensed from vending machines. "Honor box" sales of

snacks or other items on open display are not considered vending machine sales. For information on how to calculate tax on vending machine sales see WAC 458-20-244.

(b) When retail sales tax is less than 1¢. Where a vending machine is designed or adjusted so that single sales are made exclusively in amounts less than the minimum sale on which a 1¢ tax may be collected from the purchaser, and the kind of merchandise sold through such machines is not sold by the operator over the counter or other than through vending machines at that location, the selling price for purposes of the retail sales tax shall be 60% of the gross receipts of the vending machine through which such sales are made. This 60% basis of reporting is available only to persons selling tangible personal property through vending machines. RCW 82.08.080.

~~((13) In order)~~ (i) To qualify for the foregoing reduction in the measure of the retail sales tax, the books and records of the operator must show for each vending machine for which such reduction is claimed: ~~((a))~~ (A) The location of the machine, ~~((b))~~ (B) the selling price of sales made through the machine, ~~((c))~~ (C) the type and brands of merchandise vended through the machine and ~~((d))~~ (D) the gross receipts from that machine. The foregoing records may be maintained for each location, rather than for each machine, in cases where several machines are maintained by the same operator at the same location, provided that all of such machines make sales exclusively in amounts less than the minimum sale on which a 1¢ tax may be collected. The reduction will be disallowed in any instance where sales made through vending machines in such amounts are not clearly and accurately segregated from other sales by the operator and the burden is on the operator to make sales under such conditions and to maintain such records as to demonstrate absolute compliance with this requirement. RCW 82.08.060.

~~((14))~~ (ii) Every operator or owner of a vending machine, before taking a deduction from gross sales through certain vending machines, shall file with the department annually an addendum to ~~((his))~~ their application for registration with the department, on a form provided by the department, which form shall contain the following information:

~~((a))~~ (A) Number of vending machines in his ownership making sales under the above minimum.

~~((b))~~ (B) Value of such sales in the most recent calendar year.

~~((c))~~ (C) A statement that no sales are made by the owner or operator at any machine location of articles or products sold through such machines, except by vending machines and no provision is made either through the machine or otherwise, for multiple sales under circumstances where the tax may legally be collected from the buyer.

~~((15))~~ (iii) When a bond is required. The department will require a bond sufficient to assure recovery of any disallowed discount of tax due in any instance of registration where the department has reason to feel such recovery could be in jeopardy.

~~((16) Sales)~~ (7) Sales and leases of machines. The selling or leasing of vending machines, service machines and amusement devices to persons who will operate ~~((the same))~~ them are sales at retail ~~((and the))~~. Retailing B&O tax and retail sales tax ~~((is))~~ are applicable to all such sales.

~~((17))~~ (8) Use or deferred sales tax. The use or deferred sales tax applies to all tangible personal property used by persons making sales through vending machines, ~~((upon which))~~ if the retail sales tax

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address.  
This document draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

has not been paid, except inventory items resold through such machines.

~~((Revised April 28, 1978.  
Effective July 1, 1978.))~~

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