



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)
Do NOT use for expedited rule making

Agency: Department of Revenue

- Preproposal Statement of Inquiry was filed as WSR 15-13-110; or
- Expedited Rule Making--Proposed notice was filed as WSR; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information: WAC 458-20-187 ~~Coin-operated~~ Tax responsibility of vending machine owners and operators vending machines, amusement devices, and service machines-explains the taxability of income from vending machines that operate after accepting payment.

Hearing location(s):
Capital Plaza Building
4th Floor Executive Conference Rm.
1025 Union Avenue SE
Olympia, Washington

Copies of draft rules are available for viewing and printing on our website at dor.wa.gov

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

Date: **July 27, 2016** Time: **10:00 A.M.**

Submit written comments to:
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Address: Department of Revenue
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Olympia, WA 98504-7453

E-mail: LeslieMu@dor.wa.gov

By: July 27, 2016

Assistance for persons with disabilities: Contact Julie King (360) 704-5717 or Renee Cosare (360) 725-7514 no later than 10 days before the hearing date. For Hearing Impaired please contact us via the Washington Relay Operator at (800) 833-6384.

Date of intended adoption: August 3, 2016
(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The Department is proposing revisions to Rule 187 to:

- Remove the terms “amusement devices” and “service machines” and define all previously categorized amusement devices and service machines as vending machines;
- Add examples of retail and nonretail vending machines;
- Acknowledge vending machines now accept payment in forms other than coins;
- Add a list of other rules the reader may find helpful; and
- Remove outdated language referencing retail sales tax less than one cent, bond requirements, and addendums.

Reasons supporting proposal: To provide general updates and clarification to the rule, and incorporate recent legislation from Chapter 169 Laws of 2015 (HB 1550).

Statutory authority for adoption: RCW 82.32.300 and 82.01.060(2)

Statute being implemented:

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

DATE
June 21, 2016

NAME
Kevin Dixon

SIGNATURE

TITLE
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 21, 2016
TIME: 8:27 AM
WSR 16-13-111

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: Department of Revenue

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Leslie Mullin	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360) 534-1589
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Enforcement..... Marcus Gasper	1025 Union Ave. SE. Ste #500, Olympia ,WA	(360) 534-1615

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No. Explain why no statement was prepared.

The proposed rule does not impose more than minor costs on businesses in an industry.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No: Please explain:

The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

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

WAC 458-20-187 ((Coin-operated)) Tax responsibility of vending machine((s, amusement devices and service machines)) owners and operators.

((1) Definitions. As used herein the term "vending machines" means machines which, through the insertion of a coin 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.

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

(3) The term "service machines" means any coin operated machines 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) Business and occupation tax. Persons operating vending machines are engaged in a retailing business and must report and pay tax under the retailing classification with respect to the gross proceeds of sales.

(5) Persons operating amusement devices, except shuffleboard, pool, and billiard games, are taxable under the service and other business activities 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 classification upon the gross income received from the operation of such machines.

(8) 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 operator of the location, the person operating the location has granted a license to use real property and will be responsible for reporting and paying tax upon his gross compensation therefor under the service classification.

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

(10) Retail sales tax. The retail sales tax applies to the sale of merchandise through vending machines and persons owning and operating such machines are liable for the payment of such 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.

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

(11) Effective March 11, 1986, on all retail sales through vending machines the tax need not be stated separately from the selling price or collected separately from the buyer. (See RCW 82.08.050.) The seller may deduct the tax from the total amount received in the machines to arrive at the net amount which becomes the measure of the tax.

(12) 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.

(13) In order 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) The location of the machine, (b) the selling price of sales made through the machine, (c) the type and brands of merchandise vended through the machine and (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.

(14) 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 application for registration with the department, on a form provided by the department, which form shall contain the following information:

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

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

(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) 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 of vending machines, service machines and amusement devices to persons who will operate the same are sales at retail and the retail sales tax is applicable to all such sales.

(17) Use tax. The use tax applies to all tangible personal property used by persons making sales through vending machines, upon which the retail sales tax has not been paid, except inventory items resold through such machines.

Revised April 28, 1978.

Effective July 1, 1978.)) (1) **Introduction.** This rule explains the taxability of income from vending machines that operate after accepting payment. It does not apply to "reverse" vending machines that provide income to the patron in exchange for the forfeiture of tangible personal property or to vending machines used in the conduct of a public utility business, such as telephones and gas meters.

(2) **Other rules that may apply.** 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 458-20-127 Newspapers, magazines, and periodicals.
- (d) WAC 458-20-131 Gambling activities.
- (e) WAC 458-20-15503 Digital products.
- (f) WAC 458-20-165 Laundry, dry cleaning, linen and uniform supply, and self-service and coin-operated laundry services.
- (g) WAC 458-20-178 Use tax and the use of tangible personal property.
- (h) WAC 458-20-183 Amusement, recreation, and physical fitness services.
- (i) WAC 458-20-185 Tax on tobacco products.
- (j) WAC 458-20-186 Tax on cigarettes.
- (k) WAC 458-20-243 Litter tax.
- (l) WAC 458-20-244 Food and food ingredients.

(3) **What are vending machines?** Vending machines are machines that through the insertion of coins or other forms of payment will provide one of the following functions either directly or under the operation of the patron:

(a) **Vending machines that return tangible personal property.** Tangible personal property returned from vending machines include, but is not limited to, photographs, toiletries, cigarettes, beverages, food, candy, and tangible media such as a DVD or CD.

(b) **Vending machines that provide a service.**

(i) Vending machines that provide a retail service include machines that install, repair, clean, alter, imprint, or improve tangible personal property. Examples include, but are not limited to, vending machines that provide bowling ball polishing, perform car washes, allow the operation of vacuum equipment, and dispense air or water. Also included are vending machines that provide locker rentals found in amusement park, theme park, and water park facilities, and vending machines that accept self-payment for automobile parking.

(ii) Vending machines that provide a nonretail service include, but are not limited to, weight scales, coin cashing machines, and luggage locker rentals at any facility other than an amusement park, theme park, or water park; and self-service and coin-operated laundry services. For information about self-service and coin-operated laundry services, see WAC 458-20-165.

(c) **Vending machines that offer a game to be played.**

(i) Vending machines that offer retail games to be played, such as those listed in RCW 82.04.050, including air hockey, billiards, pool, foosball, darts, shuffleboard, ping pong, and similar games.

(ii) Vending machines that offer nonretail games to be played include, but are not limited to, pinball and arcade games.

(4) **Taxability of income from vending machines.**

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

(a) **Retailing and retail sales tax.** Persons operating vending machines listed in subsection (3)(a), (b)(i), and (c)(i) of this rule are making a retail sale and must report and pay tax under the retailing business and occupation (B&O) tax classification on the gross receipts from those machines. In addition, the retail sales tax applies to sales through vending machines listed in subsection (3)(a), (b)(i), and (c)(i) of this rule and operators of such machines are liable for the collection and payment of the tax.

(i) **Retail sales tax separately stated.** 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 operator may deduct the tax from the total amount received in the machine to arrive at the net amount that becomes the measure of tax.

(ii) **Exemption for 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. For information on how to calculate tax on food and food ingredient sales see WAC 458-20-244.

(b) **Service and other activities.** Persons operating vending machines listed in subsection (3)(b)(ii) and (c)(ii) of this rule must report and pay tax under the service and other activities B&O tax classification on the gross receipts from those machines.

(c) **License to use real property.** When vending 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, the location operator has granted the owner of the machines a license to use real property. The location operator is responsible for remitting tax on its gross receipts under the service and other activities B&O tax classification.

(d) **Sales and leases of machines.** Sales or leases of vending machines to persons who will operate them are sales at retail subject to the retailing B&O and retail sales tax.

(e) **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, if the retail sales tax has not been paid, except inventory items resold through such machines.