



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 458-20-193 (Rule 193) *Inbound and outbound interstate sales of tangible personal property*

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: (see attachment)

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 a public rule-making meeting or public rule-making hearing scheduled for this rule action.

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

The Department anticipates that a preliminary draft of possible rule changes will be available by January 13, 2012, via the Department's online [Rules Agenda](#). The Department is at this time asking for written comments regarding its anticipated course for amending Rule 193. Written comments should be directed to Gayle Carlson at either of the following addresses: email: GayleC@dor.wa.gov, or mailing address: ITA Division, PO Box 47453, Olympia, WA 98504-7453. Please provide your comments no later than February 10, 2012.

Date
January 5, 2012

Name Alan R. Lynn

Signature

Title Rules Coordinator

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STATE OF WASHINGTON
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STATE OF WASHINGTON

DEPARTMENT OF REVENUE

**Attachment for CR101 filing for
WAC 458-20-193**

Rule 193 provides guidance on how Washington's B&O and retail sales taxes apply to sales of tangible personal property associated with interstate commerce.

The Department is considering a limited amendment to Rule 193, the primary purpose of which would be to reconcile the existing different trailing nexus periods for the B&O and retail sales taxes.

Rule 193 currently explains in subsection (7)(c) that once nexus is established, nexus (referred to as "trailing nexus") continues for up to 5 years, notwithstanding the in-state activity that created nexus has ceased. Chapter 23, Laws of 2010 1st sp.s., § 102, changed the trailing nexus period, for B&O tax only, so that B&O nexus now exists only through the following tax year. (See RCW 82.04.220.) This legislation only addresses B&O tax nexus. Thus, under current Rule 193, a seller remains responsible for collecting retail sales tax on sales made up to 5 years after the activity creating nexus ends, even though the seller is liable for B&O tax for only one additional year. The Department is considering an amendment to Rule 193 to establish a one-year tax trailing nexus period for all other taxes.

The Department is also considering other changes to clarify existing information, such as:

- Removing the outdated sample exemption certificate now provided in the rule, which can be used to substantiate certain tax-exempt sales. The Department anticipates referring readers to the Department's web site for the "Buyer's Retail Sales Tax Exemption Certificate";
- Updating subsection (6)(b), to recognize chapter 7, Laws of 2011, which amended the sales tax exemption available for sales of property to residents of certain states, US possessions, and Canadian territories or provinces; and
- Clarifying the explanation of the tax-reporting responsibilities associated with drop-shipment sales.

While the Department believes that other guidance provided in current Rule 193 is outdated, and warrants updating, it does not at this time anticipate proceeding with amendments in these areas – unless there is stakeholder support for these changes. Nonetheless, to the extent guidance in Rule 193 conflicts with statutory provisions, the statute controls.

Examples include recognizing:

- RCW 82.32.730(9)(f)'s definition of "receive" and "receipt," particularly the provision stating that these terms "do not include possession by a shipping company on behalf of the purchaser."
- RCW 82.04.627, which provides that sales of certain parts to the manufacturer of a commercial airplane are deemed to occur at the site of final testing or inspection.