



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: The rule-making effort is to amend WAC 458-20-245, presently entitled: "Telephone business, telephone service" and to update it to present technology with the new title of: "Taxation of competitive telephone service, telecommunications service, and ancillary service." This updating of the rule will also incorporate the legislative changes from Chapter 8, Laws of 2013, 63rd Legislature 2013 2nd Special Session.

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: This rulemaking will identify what constitutes competitive telephone services, telecommunications services, and ancillary services; how these products are taxed; and the statutes that apply for determining if the sales of these products are subject to taxation in Washington state, including issues of sourcing and apportionment. The rule applies to tax periods commencing on or after July 1, 2008.

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 Mark E. Bohe at either of the following addresses: email: markbohe@dor.wa.gov, or mailing address: Mark Bohe, 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
Fourth Floor Executive 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: February 6, 2014 **Time:** 10:00 A.M.

Date December 31, 2013

Name

Alan R. Lynn

Signature

Title

Assistant Director

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OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 31, 2013

TIME: 3:15 PM

WSR 14-02-108

WAC 458-20-245 Taxation of competitive telephone service, telecommunications service, and ancillary service. This rule identifies what constitutes competitive telephone services, telecommunications services, and ancillary services; how these products are taxed; and the statutes that apply for determining if the sale of these products are subject to taxation in Washington (sourcing and apportionment). The rule applies to tax periods commencing on or after July 1, 2008. This rule is divided into three parts as follow:

- Part I: What are competitive telephone services, telecommunications services, and ancillary services?

- Part II: How are competitive telephone services, telecommunications services, and ancillary services taxed in Washington?

- Part III: When is the sale of competitive telephone services, telecommunications services or ancillary services subject to taxation in Washington (sourcing and apportionment)?

Part I: What are competitive telephone services, telecommunications services, and ancillary services?

(101) Introduction. Washington law imposes tax on the three following distinct products: competitive telephone service, telecommunications service, and ancillary service. Subsections (102), (103), and (104) describe of these three services.

(102) What is a competitive telephone service? A "competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as installation, repair, or maintenance services, if the equipment or apparatus is of a type that can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW. See RCW 82.04.065.

(103) What is a telecommunications service? A "telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act

on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. See RCW 82.04.065.

(a) What services are included within the definition of telecommunications service? Table A below provides a non-exclusive list of services considered to be telecommunications services in Washington.

Table A

<u>Type of service</u>	<u>Description</u>
<u>800 service</u>	A service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the federal communications commission.
<u>900 service</u>	An inbound toll service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: Collection services provided by the seller of the telecommunications services to the subscriber, or services or products sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the federal communications commission.

<u>Fixed wireless service</u>	<u>A service that provides radio communication between fixed points.</u>
<u>Mobile telecommunications service</u>	<u>A commercial mobile radio service, as defined in section 20.3, Title 47 C.F.R. as in effect on June 1, 1999.</u>
<u>Mobile wireless service.</u>	<u>A service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.</u>
<u>Paging service</u>	<u>A service that provides transmission of coded radio signals, which may include messages or sounds, for the purpose of activating specific pagers.</u>
<u>Private communications service</u>	<u>A service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of the channel or</u>

	<u>channels.</u>
<u>Value-added nonvoice data service</u>	<u>A service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.</u>
<u>Prepaid calling service</u>	<u>Means the right to access exclusively telecommunications services, which must be paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.</u>
<u>Prepaid telephone calling service</u>	<u>Means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.</u>
<u>Prepaid wireless calling service</u>	<u>Means a service that provides the right to use mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in</u>

	<u>advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount.</u>
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(b) What services or items are excluded from the definition of telecommunications service? Table B below provides a list of services or items not considered to be telecommunications services in Washington.

Table B

<u>Item</u>	<u>Description</u>
<u>Data processing and information services</u>	<u>Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information.</u>
<u>Tangible personal property</u>	<u>Tangible personal property.</u>
<u>Advertising</u>	<u>Advertising services, including but not limited to directory advertising.</u>

<u>Billing and collection</u>	<u>Billing and collection services provided to third parties.</u>
<u>Internet Access</u>	<u>Internet access. See RCW 82.04.297.</u>
<u>Audio and video programming</u>	<u>Radio and television audio and video programming services, regardless of the medium, including furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include but are not limited to cable service as defined in 47 U.S.C. Sec. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in section 20.3, Title 47 C.F.R.</u>
<u>Ancillary services</u>	<u>Ancillary services. See subsection (c) of this rule directly below.</u>
<u>Digital products</u>	<u>Digital products delivered electronically, including but not limited to music, video, reading materials, or ring tones.</u>
<u>Software</u>	<u>Software delivered electronically.</u>

(104) What is an ancillary service? An ancillary service is a service associated with or incidental to the provision of a telecommunications service.

(a) What services are considered to be ancillary services? Table C below provides a non-exclusive list of services considered to be ancillary services in Washington.

Table C

<u>Type of ancillary service</u>	<u>Description</u>
<u>Conference-bridging</u>	<u>A service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference-bridging service" does not include the telecommunications services used to reach the conference bridge.</u>
<u>Detailed telecommunications billing</u>	<u>A service of separately stating information pertaining to individual calls on a customer's billing statement.</u>
<u>Directory assistance</u>	<u>A service of providing telephone number information, and/or address information.</u>
<u>Vertical service</u>	<u>A service that is offered in connection with one or more</u>

	<u>telecommunications services that offers advanced calling features allowing customers to identify callers and to manage multiple calls and call connections, including conference-bridging services.</u>
<u>Voice mail</u>	<u>A service that enables the customer to store, send, or receive recorded messages. "Voice mail service" does not include any vertical services that the customer may be required to have in order to use the voice mail service.</u>

Part II: How are competitive telephone services, telecommunications services, and ancillary services taxed in Washington?

(201) Introduction. Washington law imposes tax on the three following distinct products: competitive telephone service, telecommunications service, and ancillary service.

(202) Are competitive telephone services, telecommunications services, and ancillary services taxable in Washington? Yes. The sale of a competitive telephone service, telecommunications service, and ancillary service to a consumer is a retail sale. See RCW 82.04.050. A sale of these same services that is not a retail sale constitutes a wholesale sale (a sale for resale). See RCW 82.04.060. Washington imposes taxes on retail and wholesale sales of these services as follows:

(a) Retail sales tax: The retail sale of any of these services is subject to the retail sales tax unless an exemption applies. See RCW 82.04.050. RCW 82.04.190, and RCW 82.08.020. Generally, the retail sales tax is paid by the consumer and collected and remitted by the seller.

(b) Retailing business and occupation (B&O) tax classification: Persons making retail sales of any of these services are subject to the B&O tax on the gross proceeds of these sales under the retailing classification. See RCW 82.04.050, 82.04.190, and 82.04.250.

(c) Wholesaling B&O tax classification: Persons making sales of the services for resale in the regular course of business are subject to tax on the gross proceeds of these sales under the wholesaling classification. See RCW 82.04.060 and RCW 82.04.270. See WAC 458-20-102 for information on how sales for resale are administered by the Department.

(d) Deferred retail sales tax. If the seller does not collect retail sales tax, a buyer who is not reselling the products must pay the retail sales tax (commonly referred to as "deferred retail sales tax"), unless the specific services purchased are exempt under the law.

(e) Local retail sales tax: The services are subject to sales tax in local jurisdictions that impose a retail sales tax. See RCW 82.14.030.

(203) Tangible personal property used in providing competitive telephone service, telecommunications service, and ancillary service. The retail sales tax applies to sales to a provider of telecommunications service, competitive telephone service, or ancillary services of all tangible personal property used as a consumer in providing these services.

(204) How are "bundled transactions" containing telecommunications or ancillary services treated for sales tax purposes? The taxability of bundled transactions is addressed in RCW 82.08.190 and RCW 82.08.195. Subsections (a), (b) and (c) below briefly describe what a "bundled transaction" is and how these transactions are treated for sales tax purposes.

(a) What is a "bundled transaction"? A "bundled transaction" refers to the retail sale of two or more products, except real property and services to real property, if:

- i. The products are otherwise distinct and identifiable; and

- ii. The products are sold for one non-itemized price.

(b) What is not a "bundled transaction"? A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction. There are a number of specified transactions that otherwise meet the definition of a "bundled transaction," but that are not considered to be "bundled transactions" for Washington State tax purposes. For more information about these exclusions please see RCW 82.08.190(4).

(c) How are "bundled transactions" taxed? Under statute, if a transaction contains one or more products that is subject to retail sales tax, the entire "bundled transaction" will be subject to retail sales tax. Because both telecommunications service and ancillary service are subject to retail sale tax in Washington, a transaction that contains one of these services will generally be fully subject to retail sales tax. However, if the price of a bundled transaction includes charges for telecommunications service or ancillary service and products that are not retail sales taxable:

- i. Then the portion of the price attributable to the nontaxable products is subject to the retail sales tax,

- ii. Unless the seller can identify by reasonable and verifiable standards the nontaxable portion from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes.

Part III: How is the sale of competitive telephone services, telecommunications services or ancillary services sourced?

(301) Sourcing and apportionment. This section provides references to the rules for determining if the sale of competitive telephone service, telecommunications service, or ancillary service is deemed to take place (sourced) in Washington and is subject to the retail sales tax and the rules for determining when the gross proceeds from the sale of these services is apportioned to and taxable under Washington's retailing and wholesaling B&O tax classifications.

- (a) Retail sales tax: RCW 82.32.520 and RCW 82.32.730 provide the rules that must be used for determining when a sale of competitive telephone services, telecommunications service, or ancillary service is sourced to and subject to retail sales tax in Washington.

(b) **Retailing and wholesaling B&O tax:** RCW 82.04.530 and

RCW 82.04.535 provide the rules for determining when gross proceeds from the sale of telecommunications service or ancillary service must be apportioned to and subject Washington wholesaling and retailing B&O tax classifications.

(302) **Does Washington's public utility tax apply?** Persons engaged in providing competitive telephone services, telecommunications services, and ancillary services are not taxable under the public utility tax, except with respect to gross income from engaging in telegraph or any other public service business as defined in WAC 458-20-179. See RCW 82.04.310 and 82.16.020.

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