



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Revenue

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) **(If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)**

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: WAC 458-20-255 (Rule 255) *Carbonated beverage syrup tax*. This rule explains the carbonated beverage syrup tax imposed by chapter 82.64 RCW. The syrup tax is an excise tax on the syrup, sold in this state, for use in making carbonated beverages. Syrup tax.

Rule 255 has been revised to delete language in the introduction that has caused confusion now that beverage syrups are being sold to consumers for use in home soda machines. Examples have been added under the subsection "Taxation prohibited under the United States Constitution" that show if syrup tax is owed when sales involve Indian country.

Citation of existing rules affected by this order:

Amended: WAC 458-20-255 *Carbonated beverage syrup tax*

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

Other authority : chapter 82.64 RCW

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 14-01-081 on December 16, 2013.

Describe any changes other than editing from proposed to adopted version: The introduction and the examples in subsection (5)(c) have been changed. The second paragraph of the introduction now reads: "For instance, consider the sales of syrup to Indian tribes when the syrup is delivered in Indian country. In the following examples, the assumption is that the sale to the tribal business qualifies under the subsection on preemption of state tax for "sales of tangible personal property or provisions of service by nonmembers in Indian country" in WAC 458-20-192 Indians – Indian country."

In the examples in (5)(c):

- the "purchaser" was changed from "a tribal casino restaurant" to "a tribal business"
- it has been clarified that the syrup is being delivered, as well as sold, to a tribal business in Indian country
- most of the preemption language has been replaced with verbiage that states the syrup tax is not due.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: **An analysis was not prepared.**

Date adopted: June 30, 2014

NAME Dylan Waits

SIGNATURE

TITLE Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 30, 2014
TIME: 9:44 AM

WSR 14-14-085

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	Amended	Repealed
Federal rules or standards:	New	Amended	Repealed
Recently enacted state statutes:	New	Amended	Repealed

The number of sections adopted at the request of a nongovernmental entity:

New	Amended	Repealed
-----	---------	----------

The number of sections adopted in the agency's own initiative:

New	Amended	1	Repealed
-----	---------	---	----------

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	Amended	Repealed
-----	---------	----------

The number of sections adopted using:

Negotiated rule making:	New	Amended	Repealed	
Pilot rule making:	New	Amended	Repealed	
Other alternative rule making:	New	Amended	1	Repealed

AMENDATORY SECTION (Amending WSR 08-14-019, filed 6/20/08, effective 7/21/08)

WAC 458-20-255 Carbonated beverage syrup tax. (1) Introduction.

This ~~((section))~~ rule explains the carbonated beverage syrup tax (syrup tax) as imposed by chapter 82.64 RCW. The syrup tax is an excise tax on the number of gallons of carbonated beverage syrup sold in this state ~~(, for use in producing carbonated beverages that are sold)~~ at wholesale or retail ~~((in this state))~~. The syrup tax is in addition to all other taxes.

Except as otherwise provided in this rule, the provisions of chapters 82.04, 82.08, 82.12 and 82.32 RCW regarding definitions, due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all general administrative provisions apply to the syrup tax.

This rule provides examples that identify a number of facts and then state a conclusion regarding the applicability of the syrup tax. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **What is carbonated beverage syrup?** Carbonated beverage syrup (syrup) is a concentrated liquid that is added to carbonated water to produce a carbonated beverage. ~~(("Syrup" includes concentrated liquid marketed by manufacturers to which purchasers add water, carbon dioxide, or carbonated water to produce a carbonated beverage.))~~ "Carbonated beverage" includes any nonalcoholic liquid intended for human consumption that contains any amount of carbon dioxide. Examples include soft drinks, mineral waters, seltzers, and fruit juices, if carbonated, and frozen carbonated beverages known as FCBs. "Carbonated beverage" does not include products such as bromides or carbonated liquids commonly sold as pharmaceuticals.

(3) **When is syrup tax imposed and how is it determined?** Syrup tax is imposed on the wholesale or retail sales of syrup within this state. The syrup tax is determined by the number of gallons of syrup sold. Fractional amounts are taxed proportionally.

(a) **When should syrup tax be reported and paid?** The frequency of reporting and paying the syrup tax coincides with the reporting periods of taxpayers for their business and occupation (B&O) tax. For example, a wholesaler who reports B&O tax monthly would also report any syrup tax liability on the monthly excise tax return.

(b) **What if I sell both previously taxed and nontaxed syrups?** Persons selling syrups in this state, some of which have been previously taxed in this or other states and some of which have not, may contact the department of revenue (department) for authorization to use formulary tax reporting. Prior to reporting in this manner, the person must receive a special ruling from the department that allows formulary reporting. A ruling may be obtained by writing the department at ~~((+))~~ dor.wa.gov/content/ContactUs/Default.aspx; or

Taxpayer Information and Education
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

Persons selling previously taxed syrups should refer to subsections (5)(a) and (6) of this ~~((section))~~ rule for information about an exemption or credit that may be applicable to such sales.

(4) **Who is responsible for paying the syrup tax?** This subsection explains who is responsible for payment of the syrup tax for both wholesale and retail sales of syrup in this state.

(a) **Wholesale sales.** A wholesaler making a wholesale sale of syrup in this state must collect the tax from the buyer and report and pay the tax to the department. If, however, the wholesaler is prohibited from collecting the tax under the Constitution of this state or the Constitution or laws of the United States, the wholesaler is liable for the tax. A wholesaler who fails or refuses to collect the syrup tax with intent to violate the provisions of chapter 82.64 RCW, or to gain some advantage directly or indirectly is guilty of a misdemeanor. The buyer is responsible for paying the syrup tax to the wholesaler. The syrup tax required to be collected by the wholesaler is a debt from the buyer to the wholesaler, until the tax is paid by the buyer to the wholesaler. Except as provided in subsection (5)(b)(ii) of this ~~((section))~~ rule, the buyer is not obligated to pay or report the syrup tax to the department.

(b) **Retail sales.** A retailer making a retail sale in this state of syrup purchased from a wholesaler who has not collected the tax must report and pay the tax to the department. Except as provided in subsection (5)(b)(ii) of this ~~((section))~~ rule, the buyer is not obligated to pay or report the syrup tax to the department.

(5) **Exemptions:** This subsection provides information on exemptions from the syrup tax.

(a) **Previously taxed syrup.** Any successive sale of previously taxed syrup is exempt. See RCW 82.64.030(1). "Previously taxed syrup" is syrup on which tax has been paid under chapter 82.64 RCW.

(i) All persons selling or otherwise transferring possession of taxed syrup, except retailers, must separately itemize the amount of the syrup tax on the invoice, bill of lading, or other instrument of sale. Beer and wine wholesalers selling syrup on which the syrup tax has been paid and who are prohibited under RCW 66.28.010 from having a direct or indirect financial interest in any retail business may, instead of a separate itemization of the amount of the syrup tax, provide a statement on the instrument of sale that the syrup tax has been paid. For purposes of the payment and the itemization of the syrup tax, the tax computed on standard units of a product (e.g., cases, liters, gallons) may be stated in an amount rounded to the nearest cent. In competitive bid documents, unless the syrup tax is separately itemized in the bid documents, the syrup tax will not be considered as included in the bid price. In either case, the syrup tax must be separately itemized on the instrument of sale except when the separate itemization is prohibited by law.

(ii) Any person prohibited by federal or state law, ruling, or requirement from itemizing the syrup tax on an invoice, bill of lading, or other document of delivery must retain the documentation necessary for verification of the payment of the syrup tax.

(iii) A subsequent sale of syrup sold or delivered upon an invoice, bill of lading, or other document of sale that contains a separate itemization of the syrup tax is exempt from the tax. However, a subsequent sale of syrup sold or delivered to the subsequent seller upon an invoice, bill of lading, or other document of sale that does not contain a separate itemization of the syrup tax is conclusively presumed to be previously untaxed syrup, and the seller must report and pay the syrup tax unless the sale is otherwise exempt.

(iv) The exemption for syrup tax previously paid is available for any person selling previously taxed syrup even though the previous

payment may have been satisfied by the use of credits or offsets available to the prior seller.

(v) Example. Company A sells to Company B a syrup on which Company A paid a similar syrup tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid (see subsection (6) of this ~~((section))~~ rule). It provides Company B with an invoice containing a separate itemization of the syrup tax. Company B's subsequent sale is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) **Syrup transferred out-of-state.** Any syrup that is transferred to a point outside the state for use outside the state is exempt. See RCW 82.64.030(2). The exemption for the sale of exported syrup may be taken by any seller within the chain of distribution.

(i) **Required documentation.** The prior approval of the department is not required to claim an exemption from the syrup tax for exported syrup. The seller, at the time of sale, must retain in its records an exemption certificate completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department's "Certificate of Tax Exempt Export Carbonated Beverage Syrup," or another certificate with substantially the same information. A blank exemption certificate can be obtained through the following means:

(A) From the department's internet web site at ~~((http://dor.wa.gov))~~ dor.wa.gov; or

(B) ~~((By facsimile by calling Fast Fax at 360 705 6705 or 800 647 7706 (using menu options); or~~

~~(C))~~ By writing to: Taxpayer Services, Washington State Department of Revenue, P.O. Box 47478, Olympia, Washington 98504-7478.

(ii) The exemption certificate may be used so long as some portion of the syrup is exported. Sellers are under no obligation to verify the amount of syrup to be exported by their buyers providing such certificates. ~~((Buyers providing exemption certificates for exported syrup agree to become))~~ The buyer is liable for tax ~~((and any associated penalties and interest))~~ on syrup that is not exported.

(iii) Example. Company A sells a previously untaxed syrup to Company C. Company C provides the seller with a completed exemption certificate as explained in (b)(i) of this subsection. Company C sells the syrup to Company D, who provides Company C with an exemption certificate. Company D decides to not export a portion of the purchased syrup. Companies A and C can both accept exemption certificates. Company D is responsible for paying syrup tax on the syrup not exported.

(iv) Persons who make sales of syrup to persons outside this state must keep the proofs required by WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) to substantiate the out-of-state sales.

(c) **Taxation prohibited under the United States Constitution.** Persons or activities that the state is prohibited from taxing under the United States Constitution are exempt. See RCW 82.64.050(1).

For instance, consider the sales of syrup to Indian tribes when the syrup is delivered in Indian country. In the following examples, the assumption is that the sale to the tribal business qualifies under the subsection on preemption of state tax for "sales of tangible personal property or provisions of service by nonmembers in Indian country" in WAC 458-20-192, Indians—Indian country.

(i) **Example 1.** Big Cola (an instate manufacturer) sells syrup wholesale to Little Cola Distribution (a nonbottler). Big Cola collects and pays the syrup tax and shows it on the invoice of Little Cola Distribution. Little Cola Distribution then sells and delivers the syrup to a tribal business in Indian country. In this situation the tax is due because the legal incidence of the tax is on Little Cola Distribution, a non-Indian outside of Indian country, as the first purchaser in a wholesale sale. Thus, the syrup tax is not preempted by the second wholesale sale to Indians in Indian country of syrup. In this circumstance, the legal incidence of the tax is not on the sale to the tribal business in Indian country. The syrup tax was previously owed and paid by Little Cola Distribution in its purchase from Big Cola. This tax is only collected once, notwithstanding that Little Cola Distribution separately itemized its syrup tax obligation as provided for in subsection (5)(a)(i) of this rule.

(ii) **Example 2.** Big Cola sells syrup wholesale to Little Cola Bottling (a trademarked bottler). Big Cola does not collect or pay the syrup tax from the sale to Little Cola Bottling due to the trademarked bottler exemption under subsection (5)(d) of this rule. Little Cola Bottling then sells and delivers the bottled syrup to a tribal business in Indian country. The syrup tax is not due.

(iii) **Example 3.** Big Cola sells and delivers syrup directly to a tribal business in Indian country. The syrup tax is not due.

(d) Wholesale sales of trademarked syrup to bottlers. Any wholesale sale of a trademarked syrup by any person to a person commonly known as a bottler who is appointed by the owner of the trademark to manufacture, distribute, and sell the trademarked syrup within a specific geographic territory is exempt. See RCW 82.64.030(3).

(6) Syrup tax credits.

(a) B&O tax credit for syrup tax paid. (~~Chapter 245, Laws of 2006 (SSB 6533) provided~~) RCW 82.04.4486 provides a B&O tax credit that was effective July 1, 2006. The credit is available to any buyer of syrup using the syrup in making carbonated beverages that are then sold, provided that the syrup tax, imposed by RCW 82.64.020, has been paid. The tax credit is a percentage of the syrup tax paid.

(i) How much is the credit? For syrup purchased July 1, 2006, through June 30, 2007, the B&O tax credit for the buyer (~~is~~) was equivalent to twenty-five percent of the syrup tax paid. From July 1, 2007, through June 30, 2008, the allowable credit (~~is~~) was fifty percent. From July 1, 2008, through June 30, 2009, the credit (~~is~~) was seventy-five percent. As of July 1, 2009, the buyer is entitled to a B&O tax credit of one hundred percent of the syrup tax paid.

(ii) When can the credit be taken? The B&O tax credit can be claimed against taxes due for the tax reporting period in which the taxpayer purchased the syrup. The credit cannot exceed the amount of B&O tax due, nor can credit be refunded. Unused credit may be carried over and used for future reporting periods for a maximum of one year. The year starts at the end of the reporting period in which the syrup was purchased and credit was earned. See (b)(ii)(B)(iii) of this subsection for record documentation and retention.

(b) Credit for syrup tax paid to another state. Credit is allowed against the taxes imposed by chapter 82.64 RCW for any syrup tax paid to another state with respect to the same syrup. The amount of the credit cannot exceed the tax liability arising under chapter 82.64 RCW. The amount of credit is limited to the amount of tax paid in this state upon the wholesale sale of the same syrup in this state. In ad-

dition, the credit may not be applied against any tax paid or owed in this state other than the syrup tax imposed by chapter 82.64 RCW.

(i) **What is a state?** For purposes of the syrup tax credit, "state" is any state of the United States other than Washington, or any political subdivision of another state; the District of Columbia; and any foreign country or political subdivision of a foreign country.

(ii) **What is a syrup tax?** For purposes of the syrup tax credit, "syrup tax" means a tax that is:

(A) Imposed on the sale at wholesale of syrup and is not generally imposed on other activities or privileges; and

(B) Measured by the volume of the syrup.

(iii) **How and when to claim the credit.** Any tax credit available to the taxpayer should be claimed and offset against tax liability reported on the same excise tax return when possible. The excise tax return provides a line for reporting syrup tax, and the credit must be taken in the credit section under the credit classification "other credits." A statement showing the computation of the credit must be provided. It is not required that any other documents or other evidence of entitlement to credits be submitted with the return. Such proofs must be retained in permanent records for the purpose of verification of credits taken.