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:

The Department amended this rule to implement SSB 5444, Chapter 235, Laws of 2013, which eliminated the leasehold excise credit for certain leasehold interests for the amount, if any, that the tax exceeds the property tax applicable if the property were privately owned.

Citation of existing rules affected by this order:
Amended: WAC 458-29A-600 *Leasehold excise tax—Collection and administration.*

Statutory authority for adoption: RCW 82.01.060 and RCW 82.29A.140

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 14-09-054 on April 15, 2014.

Describe any changes other than editing from proposed to adopted version: None

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 24, 2014

NAME
Dylan Waits

SIGNATURE

TITLE
Assistant Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 24, 2014
TIME: 10:31 AM

WSR 14-14-034

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:1

Federal statute:	New		Amended		Repealed
Federal rules or standards:	New		Amended		Repealed
Recently enacted state statutes:	New	x	Amended	1	Repealed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New	Amended	Repealed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New	x Amended	Repealed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New	Amended	Repealed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Negotiated rule making:	New	Amended	Repealed
Pilot rule making:	New	Amended	Repealed
Other alternative rule making:	New	Amended	Repealed

This rule was adopted on June 24, 2014 and becomes effective July 25, 2014. It may be used to determine tax liability on and after the effective date, until the codified version is available from the code reviser's office.

AMENDATORY SECTION (Amending WSR 99-20-053, filed 10/1/99, effective 11/1/99)

WAC 458-29A-600 Leasehold excise tax—Collection and administration. (1) **Introduction.** Leasehold excise tax is levied by the state under RCW 82.29A.030 and by counties and/or cities under RCW 82.29A.040. The administrative procedures contained in chapters 82.02 and 82.32 RCW apply to the administration and collection of the leasehold excise tax.

(2) **Tax imposed.** The rates at which leasehold excise tax is levied are contained in RCW 82.29A.030 and 82.29A.040. The department publishes documents containing the applicable rates, credits, and formulas. These documents are updated as necessary and are available upon request.

(3) **Separate listing requirement.** The amount of leasehold excise tax due must be listed separately from the amount of contract rent on any statement or other document provided to the lessee by the lessor. If the leasehold excise tax is not stated separately from the contract rent, it is assumed that the leasehold excise tax is not included in the amount stated as due.

(4) **Credits allowed against leasehold excise tax.** Because the leasehold excise tax is intended only to equalize treatment between private property owners and lessees of public entities, the amount of leasehold excise tax should not exceed the amount of property tax that would be due if the leased property was privately owned. Therefore, in calculating the taxes imposed under RCW 82.29A.030 and 82.29A.040, RCW 82.29A.120 authorizes the following credits:

(a) **Leasehold interests created after April 1, 1986, or situations where the department has established taxable rent.** Where a leasehold interest other than a product lease was created after April 1, 1986, or where the department has established taxable rent in accordance with RCW 82.29A.020 (2)(b), and the amount of leasehold excise tax due is greater than the amount of property tax that would be due if the property was privately owned by the lessee, without regard to any property tax exemption under RCW 84.36.381, a credit equal to the difference between the leasehold excise tax and the comparable property tax will be allowed. This credit expires at midnight, July 27, 2013.

If the property is subleased, ((~~the~~)) any allowable credit must be passed on to the sublessee. Lessees and sublessees of residential property who would qualify for either a partial or total exemption from property tax under RCW 84.36.381 if they owned the property in fee are eligible for a corresponding reduction in the amount of leasehold excise tax due. The leasehold excise tax for the qualifying lessees or sublessees is reduced by the same percentage as the percentage reduction in property that would result from the property tax exemption under RCW 84.36.381.

(b) **Product leases.** A credit of thirty-three percent of the total leasehold excise tax due is allowed for product leases.

(5) **When payment is due.** The leasehold excise taxes are due on the same date that the contract rent is due to the lessor. If the contract rent is paid to someone other than the lessor, the leasehold tax is due at the time the payment is made to that other person or entity. Any prepaid contract rent will be deemed to have been paid in the year due and not in the year in which it was actually paid if the prepayment is for more than one year's rent. If contract rent is prepaid,

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the leasehold tax payment may be prorated over the number of years for which the contract rent is prepaid. The prorated portion of the tax will be due in two installments per year, with no less than one-half due on or before May 31 and the second half due no later than November 30 of each year.

(6) **Collection and distribution of tax by the department.** The department collects and distributes the leasehold excise taxes authorized by RCW 82.29A.030 and 82.29A.040.

(a) **Taxes levied by the state.** All money received by the department from leasehold taxes levied under RCW 82.29A.030 is transmitted to the state treasurer for deposit in the general fund.

(b) **Taxes levied by counties and cities.** Prior to the effective date of the ordinance imposing a leasehold excise tax, the county or city imposing the tax must contract with the department for administration and collection services. The department may deduct a percentage, not to exceed two percent, of the taxes collected as reimbursement for administration and collection expenses. The department deposits the balance of the taxes collected in the local leasehold excise tax account with the state treasury, and the state treasurer bimonthly distributes those moneys to the counties and cities.

County treasurers must proportionately distribute the moneys they receive in the same manner they distribute moneys collected from property tax levies in accordance with RCW 84.56.230, provided that no moneys are to be distributed to the state or any city, and the pro rata calculation for proportionate distribution cannot include any levy rates by the state or any city.

(7) **Leasehold interests in federally owned land or federal trust land.** Lessees with a leasehold interest in federally owned lands or federal trust lands must report and remit the leasehold tax due directly to the department on an annual reporting basis.