Preliminary draft rule. This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

WAC 458-20-145
Local sales and use tax.

(1) Introduction. On April 22, 2007, the Washington legislature enacted Substitute House Bill (SSB) 5089 Chapter 6, Laws of 2007 entitled ("Streamlined Sales and Use Tax"). This legislation implements destination based sourcing for retail sales and becomes effective on July 1, 2008. Destination based sourcing generally requires that retail sales be sourced to the location where the customer receives tangible personal property, a retail service, or an extended warranty. There are limited exceptions to this general rule of destination based sourcing. This section explains the destination based sourcing principles as well as relevant exceptions to these principles.

Sellers and their agents are responsible for determining the appropriate rate of tax for all their retail sales taxable in Washington. Sellers and their agents are also responsible for collecting from their purchasers the correct amount of tax due upon each sale and remitting such tax to the Department of Revenue (Department).

This section is divided into four subsections. Subsection one (1) contains this introduction, a description of Department resources available to assist taxpayers in local sourcing implementation, and a glossary of commonly used terms. Subsection two (2) outlines the general destination based sourcing principles as well as the exceptions to these principles. Subsection three (3) describes assistance available to certain small eligible taxpayers to help them in their adoption of destination based sourcing. Finally, subsection four (4) provides guidance on penalty and interest abatement relief for certain small eligible taxpayers as they implement destination sourcing.

(a) What resources are available to determine the local sourcing of retail sales? The Department offers a number of resources to assist taxpayers in sourcing retail sales. These resources include:

(i) The "Quarterly Local Sales & Use Tax Flyer." This publication is updated every quarter and is mailed to all taxpayers reporting on paper returns. It is also available online. It provides a listing of all local taxing jurisdictions and their corresponding tax rates.

(ii) The "Online Sales and Use Tax Rate Look Up Application" (GIS). This is an online application that provides current and past sales and use tax rates based on an address or a selected location on a map. It also allows users to download data that they can use to incorporate into their own systems to retrieve the proper tax rate for a specific address.

(iii) Taxing jurisdiction maps. The Department has a selection of maps of various taxing jurisdictions that identify the boundaries of a specific taxing jurisdiction.

(b) Glossary of commonly defined terms.

(i) "Receipt" and "receive" mean taking possession of tangible personal property, making first use of services, or taking possession or making first use of digital goods, whichever is applicable and comes first. These terms do not include possession by a shipping company on behalf of the purchaser.

(ii) "Retail sale" has the same meaning as provided in RCW 82.04.050 and consists of the following three types of retail sales: sales of tangible personal property; sales of retail services; and sales of extended warranties.

(iii)"Retail service" means those services described in RCW 82.04.050 as retail sales. This definition includes both retail sales of labor or services rendered with respect to tangible personal property. The following is a non-exclusive list of qualifying retail services: construction contractors, repair persons, painters, plumbers, laundries, earth movers, fumigators, house wreckers or movers, hotels, motels, amusement and recreation businesses listed in WAC 458-20-183; abstract, title insurance, escrow businesses, credit bureaus, vehicle parking, landscape maintenance and horticultural businesses, tanning salons, tattoo parlors, dating services, escort services, Turkish baths, and storage garage businesses.

(iv)"Tangible personal property" means property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses as defined under RCW 82.08.010(7).

(v) "Extended warranty" has the meaning provided in RCW 82.04.050(7).

(vi)"Source" or "sourcing" refers to the local taxing district where retail sales are subject to tax.

(vii)"Consumer" has the same meaning as provided in RCW 82.04.190.

(2) Local Sourcing Rules. This subsection addresses the rules that sellers must employ in determining the sourcing of their retail sales. Subsection (a) provides the general principles for determining local sourcing, while subsections (b) through (f) provide special rules applicable to leases, certain specified types of property (e.g. watercraft, motor vehicles, mobile homes, etc.), and telecommunication services.

(a) General principles - How do I source retail sales of tangible personal property, retail services, and extended warranties. The sourcing principles described in subsection (2)(a)(i)-(v) below are presented in a descending order of priority. This means that when sourcing a retail sale, the seller will first source the sale to the seller's business location under sourcing principle 1; and if this is not possible, then to source the sale to the location required under sourcing principle 2 and so forth until the applicable sourcing rule is reached. However, it is important

to remember that if the seller ships or delivers tangible personal property to a customer outside Washington, the sale is deemed to have taken place outside Washington and is not subject to local sales tax.

(i) Sourcing principle 1:Seller's business location. If a purchaser receives tangible personal property, a retail service, or an extended warranty at the seller's business location, the sale is sourced to that business location. In the case of retail services, this sourcing principle will generally apply where purchasers receive retail services at the seller's place of business, e.g., auto repair shops, hotels, motels, amusement or recreation businesses, auto parking, storage garages, and laundries. While these examples of retail services tend to be sourced to the seller's location, if these retail services are received at a location other than the seller's place of business the subsequent sourcing rules will apply.

Examples:

Tangible personal property:
Example: A Tacoma resident travels to Renton and purchases a ring from a jeweler located in Renton. The customer takes possession of the ring at the Renton location. The jeweler will source the sale to Renton and collect the applicable local sales tax.

Retail services:
Example 1: A Longview resident takes her car to a mechanic shop located in Centralia. The mechanic services the car at the Centralia location. Several days later the customer picks up the car from the Centralia location. The mechanic will source the sale to Centralia and collect the applicable local sales tax.

Example 2: A Seattle resident drops off a roll of film at a photo developer located in Bellevue. The customer picks up the developed film from the Bellevue location. The developer will source the sale to Bellevue and collect the applicable local sales tax.

Example 3: A Pasco resident takes shirts to a drycleaner located in Kennewick. The drycleaner cleans and presses the shirts. The customer then picks up the items in Kennewick the following week. The sale is sourced to Kennewick and the drycleaner will collect the applicable local sales tax.

Extended warranty:
Example: A Des Moines resident purchases a computer from a Burien computer outlet. In a separate but related transaction conducted at the computer outlet, the customer purchases a five year extended warranty for the computer. The seller will source the sale of the extended warranty and computer to Burien and collect the applicable local sales tax.

(ii) Sourcing principle 2: Tangible personal property, retail services, or extended warranties received at a location other than the seller's place of business. If the seller delivers tangible personal property, the purchaser receives retail services, or the purchaser receives an extended warranty at a location other than the seller's place of business, then the sale will be sourced to the location where the purchaser, or the purchaser's donee, receives such property, retail service, or extended warranty. This location includes a location designated by the purchaser in the delivery instructions. Construction contractors, painters, plumbers, linen and supply services, carpet layers (retailers who install what they sell), earth movers, and house wreckers are the types of retail service providers that typically will source sales according to sourcing principle 2.

Examples:

Tangible personal property:

Example 1: A Seattle resident purchases furniture from a store located in Everett. The customer has the furniture delivered to the customer's Seattle residential address. The furniture is received at the customer's location in Seattle. The seller will source the sale to Seattle and collect the applicable local sales tax.

Example 2: A Spokane resident purchases a mattress at a store in Spokane. The merchant delivers the mattress from its warehouse located in Deer Park to the customer's home in Spokane Valley. The mattress is received at the customer's location in Spokane Valley. The sale will be sourced to Spokane Valley and the merchant will collect the applicable local tax.

Example 3: A Spokane resident purchases a mattress at a store in Spokane. The merchant delivers the mattress from its warehouse located in Deer Park to the customer's home in Idaho. Tangible personal property delivered outside of Washington is not subject to sales tax. The merchant need not collect any sales tax.

Example 4: A customer orders a pizza from a restaurant located in Tumwater. The restaurant obtains the customer's address which identifies the customer as an Olympia resident. The store delivers the pizza to the customer in Olympia. Because the pizza is received by the customer in Olympia, the seller will source the sale to Olympia and collect the applicable local sales tax.

Example 5: A Sumner resident places an order for towels with a catalog mail outlet located in Tacoma. The towels are delivered to the customer in Sumner through a common shipping carrier. The towels are received at the customer's location in Sumner. The seller will source the sales to Sumner and collect the applicable local sales tax.

Example 6: A Vancouver resident purchases a computer online from a merchant in Seattle. The computer is a gift for a student attending college in Pullman. The buyer directs the seller to ship the computer to the student's address in Pullman. The sale is sourced to the location of the student in Pullman where the computer is received. The merchant will collect the applicable sales tax based on the "ship to" address in Pullman.

Retail services:

Example 1: A Tacoma resident contracts with an Olympia painting firm to have her house repainted. The Olympia firm sends employees to the customer's home in Tacoma where they perform the painting. The painting services are received at the Tacoma site. The painting firm will source the retail services to Tacoma and collect the applicable local sales tax.

Example 2: An Aberdeen resident retains a construction contractor to build a new business facility in Kelso. Because the construction services are received in Kelso, the contractor will source the services to Kelso and collect the applicable local sales tax.

Example 3: A Shoreline resident sends a clock to a repair service located in Auburn. The service repairs the clock and then delivers the item to the customer in Shoreline. The repair service will source the sale to Shoreline where the clock is received by the customer and collect the applicable local sales tax.

Extended warranty:

Example: A Chelan resident purchases a computer over the Internet. The computer is delivered to the customer by common carrier. Along with the computer, the retail seller offers a five year extended warranty for an additional and separate price. The resident decides to purchase the extended warranty and sends the seller the appropriate paperwork and consideration. The seller later issues and sends the extended warranty documents to the customer in Chelan. The sale of the extended warranty is sourced to Chelan. Alternatively, if the customer received the warranty in a separate transaction at a retail outlet located in Deer Park, the payment for the extended warranty would be sourced to Deer Park where the warranty was received and the appropriate local tax would be collected.

(iii) Sourcing principle 3: Purchaser's address maintained in the seller's ordinary business records. If neither sourcing principles 1 nor 2 apply, the sale is sourced to the purchaser's address indicated in the seller's records maintained in the ordinary course of the seller's business, provided use of this address does not constitute bad faith.

Example: A long time customer of a Bellevue retailer contacts the retailer and purchases a box of supplies. The customer has the retailer drop ship the supplies

to a Washington location. The employee who took the call did not make a notation of the delivery address. The retailer frequently delivers such items to the customer at a specified location in Tacoma. Because the customer does not receive the supplies at the retailer's place of business and it is not known where the supplies are delivered, the retailer may use the purchaser's address maintained in its ordinary business records to source the retail sale.

(iv) Sourcing principle 4: Purchaser's address obtained at time of sale. If sourcing principles 1 through 3 do not apply, the sale is sourced to the purchaser's address obtained at the time of sale. If no other address is available, this address may be the address included on the purchaser's payment instrument (e.g., check, credit card, or money order), provided use of this address does not constitute bad faith.

Example: A customer purchases a video game over the Internet from a video retail outlet located on Vashon. The seller transmits the prewritten gaming software to an email address designated by the customer. The email address does not disclose the customer's location. The purchaser pays for the game by credit card. When entering the relevant credit card information, the purchaser discloses a residential address in Port Angeles to which the credit card is billed. In this case, the customer does not receive the software at the seller's location and it is not clear where the game is being delivered. Thus, subsections (2)(a)(i) and (ii) do not apply. Moreover, the retail outlet does not have the customer's address on file in its ordinary business records, so subsection (2)(a)(iii) does not apply. Therefore, the retail outlet will source the sale to the address related to the customer's credit card information given at the time of sale. The retail outlet will collect the local sales tax applicable to the Port Angeles address.

(v) Sourcing principle 5: Default rule. If a seller is unable to source a retail sale under one of the sourcing principles above, or the seller has insufficient information to apply those principles, the following default rules apply:

(A)Tangible personal property. Sales of tangible personal property will be sourced to the address from which the property was shipped (commonly referred to as origin-based sourcing).

Example: A business operating in Edmonds sells household appliances. The business uses employees to go door to door and sell these appliances. Each employee covers a territory over multiple local taxing jurisdictions. The majority of sales are made on a cash basis and the sales employees do not obtain information identifying the customer's location. In this instance, the customer does not take possession of the appliances at seller's business location nor does the seller have sufficient information to determine the customer's delivery location. Additionally, the seller does not have information identifying the location of these customers in its ordinary business records and did not obtain the

customer's location or address at the time of sale. The seller will collect the local sales tax applicable to the Edmonds business location.

(B) Sales of digital goods. Sales of digital goods or prewritten computer software will be sourced to the address from which the digital goods or computer software was first made available for transmission by the seller. Locations that merely provide for the transfer of digital goods, and are not the address from which the seller made the digital goods first available for transmission, will be disregarded for sourcing purposes.

Example: A customer purchases prewritten computer software electronically and requests that the software be delivered to a specified email address. The seller operates from a retail store located in Redmond. The seller does not know the locality where the software will be received and further does not keep information about the customer's location in its ordinary business records. Additionally, the customer does not supply the seller with address information at the time of sale. Therefore, the sale will be sourced under the default sourcing rules. The seller first makes available and transmits the prewritten software from a server housed at its Redmond location. The seller will source the sale to that Redmond location from which the prewritten software was first transmitted and collect the applicable local sales tax. This result will not change if the software is routed from the Redmond server through a second server (either operated by the seller or some third party) located outside of Redmond before finally being sent to the customer. Routing as used in this context refers only to the transfer of prewritten software from one location to another location(s) for retransmission to a final destination, and does not include transfers to another location where additional services or products may be added. Also, this example does not address the situation where a seller has a presence in Washington that participates in the sale (such as order taking) and transmits digital goods or prewritten software from a server or similar technology located outside Washington.

(C) Sales of retail services and extended warranties. Retail services and extended warranties will be sourced to the address from which those items were provided.

(vi) Use tax sourcing. Local use tax sourcing is not affected by the destination based sourcing rules discussed above. Where the seller does not have an obligation to collect or remit Washington sales or use tax, the tangible personal property or service sold by that person is subject to use tax under RCW 82.12 et seq., and is sourced to the place of first use.

(b) How should sellers source the lease or rental of tangible personal property? In this subsection the term "lease" includes both leases and rentals of tangible personal property. The lease of tangible personal property, other than property described in subsection (2)(c) and (d), is sourced as follows:

(i) Leases of tangible personal property requiring periodic payments. The first payment on a periodic lease is sourced according to the general destination based sourcing principles above. All subsequent periodic payments are sourced to the primary property location. This subsection does not affect the computation or imposition of retail sales or use tax on leases based on a lump sum or accelerated basis.

(A) The primary property location is the property's address as given by the lessee and kept in the lessor's records maintained in the ordinary course of business, provided use of this address does not constitute bad faith.

(B) The primary property location will not change merely by intermittent use of the leased property in different local jurisdictions, e.g., use of leased business property on business trips or service calls to multiple local jurisdictions.

Example 1: Lease of tangible personal property with periodic payments. A resident of Gig Harbor leases furniture from a store in Bremerton. The furniture will be leased for a period of one year. The store delivers the furniture to the lessee's home address in Gig Harbor where the furniture will be kept. The customer makes monthly periodic payments for the term of the lease. The first payment will be sourced to Gig Harbor where the furniture is received and the store will collect the appropriate local sales tax. The store will then also source all subsequent payments to Gig Harbor which represents the primary property location recorded in the store's ordinary business records and supplied by the lessee.

Example 2: Lease of tangible personal property payable in a lump sum. A construction company located in North Bend rents a backhoe from Construction Rentals located in Lynnwood. The lease period is 45 days. The lease is payable in a lump sum at the time of pick up. The customer picks up the equipment in Lynnwood and takes it to a job site in DuPont. Pursuant to sourcing under (2)(a), the sale is sourced to the seller's location in Lynnwood where the user picks up the backhoe. Construction Rentals will source the sale to Lynnwood and collect the applicable the local tax. There are no subsequent periodic payments to source.

(ii) Leases not requiring periodic payments (commonly referred to as "rentals"). Leases with only one payment are sourced according to the general destination based sourcing principles above.

Example: Lease not requiring periodic payments. An Olympia business rents a pressure washer from Rental Co. located in Lacey. The rental period is one day. The lessee picks up the equipment in Lacey and takes it to a job site in Yelm. Sales tax is sourced to the seller's location in Lacey. The seller will collect the local sales tax applicable to the Lacey location. If Rental Co. delivers the

pressure washer directly to the job site in Yelm, sales tax would be sourced to the location of the job site in Yelm.

(c) **How should I source the retail sale, lease and rental of transportation equipment?** The retail sale of transportation equipment, including leases and rentals, are sourced according to subsection (2)(a).

Transportation equipment refers to:

(i) Locomotives and railcars used to carry people or property in interstate commerce;

(ii) Trucks and truck tractors with gross vehicle weight ratings of 10,000 pounds or greater, trailers, and semi-trailers, or passenger buses registered through an international registration plan and operated under authority of a carrier authorized and certificated by the U.S. department of transportation (or other federal authority) to engage in carrying people or property in interstate commerce (International Registration Plan is a reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of total distance operated in all jurisdictions); and

(iii) Aircraft operated by air carriers authorized and certificated by the U.S. department of transportation (or other federal authority) to carry people or property by air.

(iv) Containers designed for use on and component parts attached or secured on the items described in (c)(i) through (iii) of this subsection.

(d) **How should I source the retail sale, rental, or lease of motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment**? In this subsection, the term "lease" includes both leases and rentals. The applicable sourcing rules are as follows:

(i) **Leases requiring periodic payments**. Each periodic payment will be sourced to the primary property location of the leased item.

(A) The primary property location is the property's address as given by the lessee and kept in the lessor's records maintained in the ordinary course of business, provided use of this address does not constitute bad faith.

(B) The primary property location will not change by intermittent use of the leased property in different local jurisdictions.

Example 1: **Lease of a motor vehicle with periodic payments.** A resident of Falls City rents a car from a dealer in Duvall. The car will be leased for a

period of one year. The customer provides the dealer with her residential address in Falls City where she keeps the car. The customer makes monthly periodic payments throughout the term of the lease. The customer's periodic lease payments will be sourced to the primary property location in Falls City, as recorded in the dealer's ordinary business records and provided by the lessee. The dealer will collect the applicable local sales tax. If the lessee were to move to Seattle during the term of the lease and notify the dealer of a change in the vehicle's primary property location, the dealer would source the subsequent lease payments to Seattle.

(ii) Leases not requiring periodic payments, (commonly referred to as a "rental"). Leases not requiring periodic payments will be sourced according to subsection (2)(a) above.

(iii) Retail sales. The retail sale, excluding leases and rentals, of motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment are sourced to the location at or from which delivery is made.

Example: Retail sale of a motor vehicle. A Federal Way resident purchases a car from a dealer in Fife. The customer has the option of picking up the car on the lot in Fife or having it delivered to his residential address in Federal Way. The customer asks to have the car delivered to Federal Way. The sale of the car will be sourced to the dealer's location in Fife from which the car was delivered and the dealer will collect the applicable local sales tax.

(e) Telecommunication sourcing. Telecommunication services to consumers are retail sales. Sourcing rules specific to telecommunication services and related ancillary services are located in RCW 82.32.520. Definitions related to telecommunication services are located at RCW 82.04.065.

(f) Watercraft and modular, manufactured, and mobile homes. The retail sales of watercraft and modular, manufactured, and mobile homes are sourced to the location at or from which delivery is made.

(3) Is there any assistance for small business owners who will be making the switch to destination based sourcing? Yes, Washington provides certain small eligible taxpayers with either a $1000.00 tax credit to defray the costs associated with switching to destination based sourcing or will assist in the payment of costs related to the use of certified service providers (CSPs) by these eligible taxpayers for a period of up to two years. CSPs are agents of the seller authorized to perform all of the seller's sales and use tax functions other than the obligation to collect and remit sales or use tax on its own purchases. For more information concerning CSPs see SSB 5089, section 101.

(a) Eligible taxpayers. Eligible taxpayers are taxpayers that:

(i) Have registered with the Department and engaged in making sales of tangible personal property with delivery of that property to physical locations away from the taxpayer's place of business prior to July 1, 2008; and

(ii) have during calendar year of 2008:

(A) A physical presence in Washington;

(B) Gross income from business of less than $500,000;

(C) At least 5% of gross income from sales subject to sales tax derived from sales of tangible personal property delivered to physical locations away from the place of business; and

(D) At least 1% of gross income from sales subject to sales tax derived from deliveries of tangible personal property to destinations in local jurisdictions imposing sales tax other than the one to which the taxpayer reported the most local sales tax during the 2008 calendar year.

(b) Payment of CSP costs. Eligible taxpayers may use the services of a CSP for reporting periods up to two years after July 1, 2008 and the State will provide monetary allowances to help compensate those CSPs for their services. Under this option, eligible taxpayers will not have to pay for covered CSPs services used during the relevant two year time frame.

(c) Credits. Eligible taxpayers who do not choose option (3)(b) above may claim a credit for eligible compliance costs. This credit may be taken against the retail sales taxes imposed by RCW 82.08.020(1) which were collected and remitted by that taxpayer as seller and also the business and occupation taxes imposed under RCW 82.04.220. The amount of this credit is equal to the sum of the compliance costs related to SSB 5089, section 503. The maximum credit permissible is $1,000. This credit must be claimed within one year of July 1, 2008, and cannot be taken prior to that date. This credit may be claimed until used, but no refunds may be granted in lieu of the credit.

(d) Eligible compliance costs. Eligible compliance costs are goods and services purchased and labor costs incurred for the purpose of complying with local sales and use tax destination sourcing rules. Only costs incurred between July 1, 2007, and June 30, 2009, qualify for the credit.

(4) Interest and penalty mitigation. Taxpayers meeting the requirements of (3)(b)(i) and (3)(b)(ii)(B-D) above will not be liable for interest or penalties for errors in collecting sales and use taxes, where the errors arise out of changes to local destination based sourcing rules. This interest and penalty mitigation ends on July 1, 2012.

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