

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 458-20-153 — Funeral directors.~~ Funeral directors commonly quote a lump sum price for a standard funeral service, which includes the furnishing of a casket, professional services, care of remains, funeral coach, floral car and the securing of permits.

~~Business and Occupation Tax~~

~~— Retailing.~~ The gross amount subject to the retail sales tax as outlined below, is taxable under the retailing classification of the business and occupation tax except that there may be deducted, for purposes of the business tax only, amounts received as reimbursement for expenditures for goods or services supplied by others who are not persons employed by, affiliated, or associated with the funeral home, when such amounts were advanced by the funeral home as an accommodation to the person paying for a funeral; but this deduction is allowed only if such expenditures advanced are billed to the person paying for the funeral at the exact amount of the expenditure advanced and such amounts are separately itemized in the billing statement to such person.

~~— Service and other business activities.~~ That portion of the gross income derived from engaging in business as a funeral director which is not taxable under the retailing classification is taxable as service and other business activities.

~~Retail Sales Tax~~

~~—~~ Where the funeral director quotes a lump sum price for a standard funeral service, which includes both the sale of tangible personal property and a charge for the rendering of service, the retail sales tax is collected upon one half of such lump sum price. Clothing, outside case (a concrete or metal box into which the casket is placed) and other tangible personal property furnished in addition to the casket must be billed separately and the retail sales tax collected thereon.

~~—~~ The retail sales tax is not applicable to sales made to funeral directors of tangible personal property which is resold separate and apart from the rendition of professional services, provided the vendor receives from the funeral director a resale certificate in the usual form. The property so purchased

~~includes the casket, clothing, outside case and acknowledgment cards.~~

~~The retail sales tax is applicable to sales to funeral directors of tangible personal property which is consumed in the rendition of professional services. The property so purchased includes all preparation room supplies (embalming fluid and other chemicals, solvents, waxes, cosmetics, eye caps, gauze, cotton, etc.). The sales tax is also applicable to sales to such persons of tools and equipment.~~

Use Tax

~~The use tax applies upon the use within this state of all articles of tangible personal property used in the performance of professional services when such articles have been purchased or acquired under conditions whereby the Washington retail sales tax has not been paid.~~

[Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-153, filed 3/15/83; Order ET 70-3, § 458-20-153 (Rule 153), filed 5/29/70, effective 7/1/70.]

Funeral establishments.

(1) **Introduction.** This section explains:

- (a) The application of business and occupation (B&O), retail sales, and use taxes to the business activities of funeral establishments, and
- (b) The application of tax to income derived from prearrangement funeral service contracts.

For the purposes of this section, the term "funeral establishment" means a person licensed under RCW 18.39.145. Persons operating cemeteries should refer to WAC 458-20-154 (Cemeteries, burial parks, crematories, columbaria, and mausoleums) for tax-reporting information.

The Board of Funeral Directors and Embalmers (Board), the Funeral Directors, Embalmers and the Funeral Establishments Licensing Program of the department of licensing regulate funeral establishments. This licensing program serves as staff for the board, administers licensing examinations for funeral directors and embalmers, investigates complaints, and examines funeral prearrangement trust funds. For funeral establishments, refer to chapter 18.39 RCW and chapters 308-47, 308-48, and 308-49 WAC for information on the laws and administrative rules governing their business activities.

- (2) **General tax reporting responsibilities.** The gross proceeds attributable to funeral services are subject to the service and other activities B&O tax. Retailing B&O tax applies to the gross proceeds of retail sales of tangible personal property

such as urns, caskets, clothing, outside casket cases, floral arrangements, plants, and acknowledgement cards. Funeral establishments are also responsible for collecting and remitting to the department of revenue sales tax on retail sales of tangible personal property unless specifically exempt by law.

- (a) **Reimbursement for accommodation expenditures.** Amounts received by a funeral establishment as reimbursement for goods or services provided by persons not employed by, affiliated, or associated with the funeral establishment may be deducted from the measure of the B&O tax if these amounts have been reported as gross income on the funeral establishment's excise tax return. These amounts are deductible if advanced to accommodate the customer and separately itemized on the billing statement or invoice in the exact amount of the expenditure. See RCW 82.04.4296.
- (b) **Instate services with out-of-state interment.** A funeral establishment may perform funeral services within Washington, or other services such as preparing the remains of a deceased person and placing the remains in a casket, with the remains subsequently removed to another state for interment. In these cases, the B&O and retail sales taxes generally apply to the income received from the sale of funeral merchandise and services as explained in this subsection (2). The merchandise (e.g., casket or urn) is delivered to the buyer within Washington when the merchandise is used in performing these services, even if interment subsequently occurs outside the state. Neither B&O nor retail sales taxes apply to the sale of tangible personal property used in performing services in Washington and delivered by the seller to the buyer at an out-of-state location. Refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) for more information regarding the delivery requirements for out-of-state sales of tangible personal property.
- (c) **Sales to the federal government.** Direct sales to the federal government are exempt from the retail sales tax, though the seller remains subject to B&O tax unless a specific exemption applies. Sales to other persons, whether paid with federal funds or through a reimbursement arrangement, are fully subject to the retail sales tax. For additional information about the taxability of sales to the federal government, refer to WAC 458-20-190 (Sales to and by the United States, its departments, institutions and instrumentalities -- Sales to foreign governments).
- (3) **Funeral establishments purchasing tangible personal property.** Generally, retail sales tax is due when purchasing items used or consumed by funeral establishments when providing professional services. These items generally include but are

not limited to equipment, tools, furniture, and all preparation room supplies such as embalming fluid and other chemicals, solvents, waxes, cosmetics, eye caps, gauze, and cotton.

- (a) **Items purchased for resale.** Tangible personal property purchased for resale without intervening use is not subject to retail sales tax. Property commonly purchased for resale by funeral establishments includes but is not limited to urns, caskets, clothing, outside casket cases, flowers, plants, and acknowledgment cards. A funeral establishment purchasing tangible personal property for resale must provide a properly completed resale certificate to the seller. Resale certificates are available on the department's website at <http://dor.wa.gov>, or by calling the department's Taxpayer Information Center at 1-800-647-7706. For additional information regarding the use of resale certificates, refer to WAC 458-20-102 (Resale certificates).
- (b) **Deferred sales and use tax.** If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. For detailed information regarding use tax, refer to WAC 458-20-178 (Use tax).
- (4) **Prearrangement contracts and trusts.** Funeral establishments often enter into prearrangement contracts requiring them to provide funeral services and merchandise at some future date. Unless otherwise exempt, the law requires funeral establishments to place a portion of the cash purchase price of the contract (at least ninety percent as of the effective date of this rule), excluding sales tax, into one or more prearrangement funeral service trusts. Withdrawal of trust funds may only occur upon fulfillment or cancellation of the contract. See RCW 18.39.
- (a) **When does tax liability arise?**
- (i) **Accrual Method Accounting.** Amounts subject to B&O and retail sales taxes must be reported to the department at the time that the funeral establishment becomes legally entitled to receive the consideration or enters as a charge against the purchaser the amount of the consideration agreed upon, whether payable immediately or at a definitely determined future time. See WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods).
- (ii) **Cash Method Accounting.** Amounts not placed in a prearrangement trust are subject to B&O and retail sales taxes at the time that the funeral establishment receives payment. Amounts placed in a prearrangement trust are subject to B&O and retail sales taxes upon withdrawal from the trust and acceptance by the funeral establishment. See

WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods).

- (b) **Prearrangement funeral service trust accounts.** If sales tax paid by the buyer is not placed into a prearrangement funeral service trust account, the tax must be reported on the excise tax return for the current reporting period and remitted to the department. A refund of sales tax remitted by a funeral establishment to the department, instead of having been placed in a prearrangement funeral service trust, is subject to the time limitations on refunds in RCW 82.32.060. For example, the law prohibits the department from refunding sales tax to a funeral establishment for a prearrangement contract that is canceled five years after the sales tax associated with the contract is remitted to the Department. See also WAC 458-20-229 (Refunds).
- (c) **Contract cancellation and trust administration fees.** Amounts retained by the funeral establishment when a prearrangement funeral service contract is canceled are subject to the service and other activities B&O tax, except that any amounts allocable to a retail sale of merchandise are subject to retailing B&O and retail sales taxes. Administration fees deducted from a prearrangement funeral service trust by the administrator are also subject to the service and other activities B&O tax.
- (5) **Sourcing.** In general, the place of sale occurs where the body is placed in the casket. For other sourcing information, refer to WAC 458-20-145.
- (6) **Examples.** The following examples identify a number of facts and state a conclusion regarding the taxability of funeral establishments. The tax results of other situations must be determined after a review of all of the facts and circumstances. Use these examples only as a general guide.
- (a) John and Jane Doe contracted with ABC Funeral Home (ABC) for the funeral of a deceased relative. John and Jane also purchased a casket from ABC. Funeral services purchased from ABC included preparing the body of the deceased for viewing, arranging for the final disposition, providing facilities for the visitation and funeral service, and transporting the deceased and the mourners to the place of final disposition.
- (i) ABC owes service and other activities B&O tax for the funeral services charge.
- (ii) The charge for the casket is subject to retailing B&O and retail sales taxes.

(b) John and Jane Doe entered into a prearrangement funeral service contract with ABC for the purchase of funeral merchandise and services to be provided upon their deaths. John and Jane made a down payment when signing the contract and agreed to pay the balance in sixty monthly installments. The merchandise and services John and Jane purchased include a casket, preparing the body of the deceased for viewing, arranging for the final disposition, providing facilities for the visitation and funeral service, and transporting the deceased and the mourners to the place of final disposition. The contract itemizes sales tax and provides for a finance charge on the unpaid balance of the contract. ABC places all receipts under the contract, including finance charges, into a prearrangement funeral service trust account.

ABC uses the cash method of accounting and does not enter as a charge against the purchaser the amount of the consideration agreed upon until they deliver the merchandise and perform the services.

ABC must report:

- (i) The charges for funeral services and the finance charges under the service and other activities B&O tax classification at the time they perform the services, and
- (ii) The charge for the casket is subject to retailing B&O and retail sales tax at the time it is used.

(c) The facts are the same as in the previous example except that ABC maintains its books of account on the accrual basis. Except for the finance charges, ABC charged John and Jane for the merchandise and services when the parties signed the contract.

ABC must report:

- (i) The charges for funeral services under the service and other activities B&O tax classification in the reporting period that the contract was signed,
- (ii) Retailing B&O and retail sales taxes on the sale of the casket in the reporting period that the contract was signed, and
- (iii) The finance charge under the service and other activities B&O tax classification at the time that it becomes legally entitled to receive the finance charge or enters the charge against John and Jane Doe in its books of account.