

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 458-20-154 Cemeteries, crematories, columbaria.

Business and Occupation Tax

~~— **Retailing.** The gross proceeds derived from the sale of tangible personal property taxable under the retail sales tax are also taxable under the retailing classification.~~

~~— **Service and other business activities.** Income derived from rendition of interment services is taxable under the service and other business activities classification. Sales or transfers of plots, crypts, and niches for interment of human remains, irrespective of whether the document of transfer is called a deed or certificate of ownership, are charges for the right of interment, an interest similar to a license to use real estate, and the entire gross income therefrom is taxable under the service and other activities classification without any deduction for amounts set aside to funds for perpetual care.~~

~~**Retail Sales Tax**~~

~~— Cemeteries, crematories and columbaria are subject to the provisions of the retail sales tax with respect to retail sales of boxes, urns, markers, vases, plants, shrubs, flowers, and other tangible personal property.~~

~~— Revised June 1, 1978.~~

~~— Effective July 1, 1978.~~

~~[Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-06-083 (Order 78-3), § 458-20-154, filed 6/1/78; Order ET 70-3, § 458-20-154 (Rule 154), filed 5/29/70, effective 7/1/70.]~~

- (1) **Introduction.** This rule explains:
- (a) The application of business and occupation (B&O), retail sales, and use taxes to the business activities of cemeteries,
 - (b) The application of B&O and retail sales taxes to amounts derived by cemeteries from prearrangement contracts (commonly referred to as "pre-need" or "prepaid" arrangements) for the sale of interment rights, merchandise, and services, and
 - (c) The tax treatment of amounts placed into and subsequently received from endowment care funds for cemetery care and maintenance.

For purposes of this rule, the term "cemeteries" includes cemeteries, burial parks, crematories, columbariums, and mausoleums. Refer to WAC 458-20-153 (Funeral establishments) for funeral establishment tax-reporting information.

The cemetery board and the cemetery licensing program of the department of licensing regulates private cemeteries. The cemetery licensing program serves as staff to the cemetery board, licenses private cemeteries, investigates complaints, and examines cemetery endowment care and prearrangement trust funds. Refer to Title 68 RCW and Title 98 WAC for information on the laws and administrative rules governing Cemeteries.

(2) **General tax reporting responsibilities.**

(a) **Sales of interment services and interment rights.**

Amounts derived from interment services such as document recording, opening and closing the interment space, and installing grave liners or vaults are subject to the service and other activities B&O tax. Sales or transfers of plots, crypts, and niches for the interment of human remains, irrespective of how the document of transfer is described (e.g., deed, certificate of ownership, or certificate of interment rights), are charges for the right of interment, an interest similar to a license to use real estate. Thus, the gross income from sales of interment rights is subject to B&O tax under the service and other activities classification without any deduction for amounts set aside in endowment care trust funds.

(b) **Sales of merchandise, including installing, repairing, cleaning, altering, or improving property.** The gross proceeds of retail sales of tangible personal property such as monuments, markers, memorials, nameplates, outer burial containers (e.g., vaults), boxes, urns, vases, benches, plants, shrubs, and flowers are subject to B&O tax under the retailing classification. Retailing B&O tax also applies to charges by cemeteries for installing, repairing, cleaning, altering, or improving tangible personal property of or for consumers. Cemeteries are also responsible for collecting and remitting to the department of revenue (the department) sales tax on retail sales of tangible personal property and charges for installing, repairing, cleaning, altering, or improving tangible personal property of or for consumers unless specifically exempt by law. Thus, charges for installing markers and monuments are subject to retailing B&O and retail sales taxes.

(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) **Cemeteries purchasing tangible personal property.**

Generally, retail sales tax is due when purchasing tangible personal property such as tools and supplies used or consumed by cemeteries when providing interment services.

(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 cemeteries includes but is not limited to monuments, markers, memorials, nameplates, liners, vaults, boxes, urns, vases, benches, plants, shrubs, and flowers. Cemeteries 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 about 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 sales tax on a retail sale, the buyer must remit the sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless specifically exempt by law. For detailed information about use tax, refer to WAC 458-20-178 (Use tax).

(4) **Prearrangement contracts.** Cemeteries often enter prearrangement contracts with customers for the purchase of merchandise and services, unconstructed crypts or niches, or undeveloped graves furnished at a future date. Executed contracts are paid in either a lump sum or in installments. Unless otherwise exempt, the law requires cemeteries to place a percentage of all funds collected in payment of each prearrangement contract in a prearrangement trust account. As of the effective date of this rule, the amount required in a prearrangement trust account is equal to the greater of (for merchandise) fifty percent of the contract price, or the wholesale cost of the item, (for services) fifty percent of the contract price or the direct cost of providing the service. Withdrawal of trust funds may only occur upon fulfillment or cancellation of the contract. See chapter 68.46 RCW.

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

(b) Prearrangement trust accounts. If sales tax paid by the buyer is not placed into a prearrangement 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 cemetery to the department instead of having been placed in a prearrangement trust is subject to the time limitations on refunds provided by RCW 82.32.060. For example, the law prohibits the department from refunding sales tax to a cemetery 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 a cemetery from a canceled prearrangement contract are subject to service and other activities B&O tax, except that any amount allocable to a retail sale of merchandise is subject to retailing B&O and retail sales taxes. Administration fees deducted from a prearrangement trust fund by the administrator are also subject to the B&O tax under the service and other activities classification.

(5) Endowment care funds. State law requires nonexempt cemeteries to place a portion of the gross sales price of plots sold (ten percent as of the effective date of this rule) into an endowment care fund. Cemeteries may only use endowment care funds to generate income used for the care, maintenance, and embellishment of the cemetery. Amounts subsequently placed in an endowment care fund are part of the cemetery's gross income and subject to the service and other activities B&O tax. Amounts received by a cemetery from an endowment care fund to cover costs incurred by the cemetery for endowment care services are not subject to B&O tax to the extent that the amounts qualify as an advance or reimbursement under WAC 458-20-111 (Advances and reimbursements).

(6) Examples. The following examples identify a number of facts

and then state a conclusion regarding the taxability of cemeteries. 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 Cemetery Association (ABC) for the interment of a deceased relative. The interment rights, merchandise, and services provided by ABC include an interment plot, an outer burial container, burial of the decedent, a marker, and installation of the marker. In addition, ABC charges a document-recording fee. ABC places ten percent of the gross sales price of the interment plot into an endowment care trust fund.

(i) ABC is subject to service and other activities B&O tax on charges for the interment plot (including the required amount in the endowment care trust fund), burial of the decedent, and the document-recording fee.

(ii) The charges for the outer burial container, marker, and marker installation are subject to retailing B&O and retail sales taxes.

(b) John and Jane Doe entered into a prearrangement contract with ABC for the purchase of interment rights, merchandise, and services 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 interment rights, merchandise, and services purchased by John and Jane include interment plots, outer burial containers, burial of their remains, markers, and installation of the markers. The contract identifies ten percent of the gross sales price of the interment plots as endowment care funds, itemizes sales tax and provides for a finance charge on the unpaid balance.

ABC places all receipts under prearrangement contracts, including the finance charges, into a prearrangement trust account. ABC uses the cash method of accounting and does not enter the charge of the amount of the consideration agreed upon until they deliver the merchandise and perform the services. In addition, ABC charges John and Jane a document-recording fee but does not charge the amount agreed upon for the interment rights until they collect a certain percentage of the sales price and until the property is constructed or developed.

ABC must report:

(i) The amounts received for the interment plots (including

the endowment care trust fund's required amounts) under the service and other activities B&O tax classification at the time it charges John and Jane Doe for the cost of the plots,

(ii) The amounts received for the burial of remains, the document-recording fee, and the finance charges under the service and other activities B&O tax classification at the time they perform the services, and

(iii) Retailing B&O and retail sales taxes on the sale of the outer burial containers, markers, and marker installation in the reporting period during which they deliver the merchandise and perform the installation.

(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 charge, ABC charged John and Jane for the price of the interment plots, merchandise, and services at the time the parties signed the contract.

ABC must report:

(i) The amounts received for interment plots (including the endowment care trust fund's required amounts), burial of remains, and the document-recording fee 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 outer burial containers, markers, and marker installation 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 it or charges John and Jane Doe in its books of account.