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AMENDATORY SECTION (Amending WSR 83-07-033, filed 3/15/83)

**WAC 458-20-173 Services on tangible personal property.**

(1) **Introduction.** This rule explains the business and occupation (B&O), retail sales, and use tax reporting responsibilities of persons installing, cleaning, decorating, beautifying, repairing, imprinting, or otherwise altering or improving tangible personal property (collectively referred to as "services on tangible personal property" in this rule). This rule also explains the use tax responsibilities of consumers when the seller fails to collect retail sales tax on these services.

This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances. Persons providing services on tangible personal property may also want to refer to the following rules:

(a) WAC 458-20-113 for information about ingredients or components, chemicals used in processing new articles for sale;

(b) WAC 458-20-136 for information about distinguishing between repairing or refurbishing activities and manufacturing activities;

(c) WAC 458-20-141 for information about the tax-reporting responsibilities of mailing bureaus;

(d) WAC 458-20-155 for information about services on computer hardware and software;

(e) WAC 458-20-165 for information about laundry, dry cleaning, linen and uniform supply, and self-service and coin-operated laundry services; and

(f) WAC 458-20-257 for information about the tax consequences of warranties and maintenance agreements.

**(2) What are the tax-reporting responsibilities for income received by persons performing services on tangible personal property in Washington?**

Persons performing services on tangible personal property of or for others in the state of Washington are generally subject to retailing or wholesaling B&O tax, as the case may be. Additionally, persons rendering such services to consumers must collect and remit retail sales tax, unless the sale is exempt by law. These taxes apply even if the service charge is exclusively attributable to labor with no tangible personal property involved.

A seller is not required to collect and remit retail sales tax on wholesale sales of services on tangible personal

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property. The seller must obtain a resale certificate from the customer to document the wholesale nature of the transaction. Refer to WAC 458-20-102 for a more detailed discussion on resale certificates.

(a) **What is the measure of tax?** B&O and retail sales taxes apply to gross proceeds of sales (RCW 82.04.070) and selling price (RCW 82.08.020), respectively. These measures are generally the total charge for rendition of services, without any deduction for the cost of materials and supplies, labor costs, interest, delivery costs, taxes, or any other expenses whatsoever paid or accrued and without any deduction on account of losses. See WAC 458-20-110 for more information on the taxability of delivery charges associated with services on tangible personal property.

The total charge for rendition of services on tangible personal property includes the entire charge for these services. This includes separately itemized charges for both labor and parts incorporated into the property by the person rendering the services. It also includes all separately itemized charges reflecting expenses incurred by the seller in connection with the services, such as transportation, hotel, meals, and telephone costs, even if there is no markup of these costs by the seller providing the services.

(i) **Example.** An airplane engine owned by an in-state flight school is delivered to Washington Air Repair in Vancouver for repair. Replacement parts are installed into the engine as part of the repair service. The total charge for the repair service, including itemized charges for labor and replacement parts, is subject to retailing B&O and retail sales taxes.

(ii) **Example.** Washington Air Repair sends a technician from Oregon to repair an airplane engine owned by an in-state flight school. The total charge for the repair includes itemized charges recovered for hotel and meal expenses incurred by the technician. The total amount charged for the service, which includes all itemized charges, is subject to retailing B&O and retail sales taxes.

(b) **Services performed out-of-state.** In some instances, persons in the state of Washington who perform services on tangible personal property of and for others may arrange for services to be performed, in whole or in part, outside Washington.

(i) **Taxability of services—Retailing B&O and retail sales taxes.** The total charge, including any charges for out-of-state service, is subject to B&O and retail sales taxes if the out-of-state service is at the option of the seller or is not an

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integral part of the sales agreement with the buyer. If the out-of-state service to tangible personal property is an integral part of the sales agreement, only those charges for services performed within the state of Washington are subject to B&O and retail sales taxes.

(ii) **Taxability of services—Use tax.** The charge by a seller for services performed outside the state of Washington, however, is subject to use tax. The seller must collect and remit the use tax if the seller is required to register with the department and delivers the property into Washington. Refer to WAC 458-20-101 for information regardless the seller's responsibility to register with the department. If services on tangible personal property are performed out of state, and either the seller is not required to be registered with the Department or the seller does not deliver the property into Washington, then the consumer is responsible for remitting use tax when the consumer brings the tangible personal property into Washington for use. In either case, the measure of use tax is the entire charge for the services. Refer to subsection (4)(a) of this rule for more information on the measure of use tax.

(iii) **Examples.** Unless otherwise indicated, the following examples are based on the facts that the person performing the repair services is registered in Washington, and the customer is located in Washington.

(A) An airplane engine owned by Flight School is delivered to Air Repair's Vancouver, Washington facility for repair. Air Repair elects to perform the repair at its Portland repair facility in Oregon. This election is not a part of the sales agreement with Flight School. The repaired engine is then delivered by Air Repair via common carrier to Flight School in Washington. The charge for the repair service is subject to retailing B&O and retail sales taxes, because the out-of-state service is provided at the option of Flight School.

(B) An airplane engine owned by Flight School is delivered to Air Repair at its Portland repair facility in Oregon. Repair at the Portland facility is a condition of the sales agreement between Air Repair and Flight School. The repaired engine is then delivered by Air Repair via common carrier to Flight School in Washington. The charge for the repair service is subject to Washington use tax, which must be collected by Air Repair.

(C) An airplane owned by Flight School is delivered to Air Repair's Vancouver, Washington facility for repair. The sales agreement specifies that the airplane engine is repaired at Air Repair's Portland facility while the rest of the airplane is repaired at the nearby Vancouver facility. The repaired

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airplane is then delivered by Air Repair to Flight School in Washington. Because part of the repair service is made out-of-state, the charge for the out-of-state repair service is not subject to retailing B&O tax. However, the charge for the out-of-state repair service is subject to Washington use tax, which must be collected by Air Repair. The charge for the in-state repair service is subject to retailing B&O and retail sales taxes.

(D) A vehicle owned by Driving School delivered to Automobile Repair's Vancouver, Washington facility for repair. First, the vehicle is repaired at the Vancouver facility, and then it is washed at the nearby Portland car washing facility. The repaired vehicle is then delivered by Automobile Repair to Driving School in Washington. Car wash is not an integral part of the sales agreement between Automobile Repair and Driving School. The entire charge of the services is subject to retailing B&O and retail sales taxes.

(c) **Instate services performed for nonresidents.** Services on tangible personal property performed in Washington for nonresidents are subject to B&O and retail sales taxes, unless specifically exempt by law.

(i) **RCW 82.08.0273—Sales tax exemption for sales to certain nonresidents.** RCW 82.08.0273 provides an exemption from retail sales tax for sales of tangible personal property to nonresidents for use outside this state, if such nonresidents reside in a state or possession or Province of Canada imposing a retail sales tax or use tax of less than three percent. This exemption, however, is not applicable to services on tangible personal property. For example, Jane Doe, an Oregon resident, has her muffler repaired by Automobile Repair in its Vancouver, Washington facility. The entire charge for the repair services, including any separately itemized charge for labor and material components of the service, is subject to retailing B&O and retail sales taxes.

(ii) **RCW 82.08.0265—Sales tax exemption for services performed on property of nonresidents.** RCW 82.08.0265 provides an exemption from retail sales tax for services on tangible personal property performed in Washington for certain out-of-state customers for use outside this state. This exemption requires that: (A) The customer must be a nonresident of the state of Washington; and (B) the seller agrees to and delivers the tangible personal property to the purchaser, or to a common or bona fide private carrier consigned to the purchaser, at a point outside this state. For example, an airplane engine owned by Oregon Flight School is delivered to Air Repair's Vancouver,

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Washington facility for repair. The repaired engine is then delivered by Air Repair via common carrier to Oregon Flight School outside the state. The charge for the repair service is exempt from retail sales tax. However, Air Repair must pay retailing B&O tax on the total charge because there is no comparable B&O tax exemption.

(3) **What are the retail sales tax and use tax liabilities for property used by persons in performance of services on tangible personal property of or for others?** Persons performing services on tangible personal property of or for others are required to pay retail sales tax on purchases of equipment, materials, and supplies that are consumed or used, in whole or in part, in the process of providing the services. Such equipment, materials, and supplies include, but are not limited to, such items as machinery, hand tools, abrasives such as sandpaper and grit used for sandblasting, and gases such as oxygen and acetylene used in cutting or welding processes. If the seller fails to collect retail sales tax, the buyer is required to pay retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department.

On the other hand, neither retail sales tax nor use tax apply to purchases or use of property that becomes an ingredient or component of the tangible personal property being serviced, as long as there is no intervening use as a consumer of the property. Examples of such property include, but are not limited to, timing belts and brake linings, air and gas filters, paint, and fluids such as oil and antifreeze. The buyer must present the seller with a resale certificate to document the wholesale nature of the transaction. Refer to WAC 458-20-102 for more information on resale certificates.

(a) **Example.** Marine Repair and Supply Company (MRSC) repairs watercraft for boat owners. MRSC purchases parts, paint, and other surface coatings that are not subject to retail sales tax, because these items become ingredients and components of boats in the repair process, provided that MRSC provides a resale certificate to its vendors. In contrast, MRSC's purchases of supplies such as paint thinner, sand for sandblasting, rags, coveralls, masking tape, gloves, and paint brushes are subject to the retail sales tax or use tax, because these items are used or consumed in the process of performing repair services.

(b) **Example.** Machinery Repair Company (MRC) purchases oxygen, acetylene, and welding rods. Oxygen and acetylene are used in welding or cutting to produce intense heat necessary to melt the base metal, the welding rod being added to form a bond

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between surfaces. Welding rod becomes a component of the articles during repair. MRC may purchase welding rods at wholesale, provided that MRC provides the seller with a resale certificate. Oxygen and acetylene are consumed in repair processes, and they do not become components of the repaired articles. Consequently, MRC must pay retail sales tax to the seller on purchases of oxygen and acetylene. If the seller does not collect retail sales tax, MRC must remit deferred sales tax or use tax directly to the department.

(c) **Example.** Automobile Repair Company (ARC) uses a resale certificate to purchase parts from Spokane Distributing. During maintenance of its own tow truck, ARC removes parts from its sales inventory to complete some repairs to the tow truck. Deferred sales tax or use tax must be paid to the department on parts purchased for resale that ARC subsequently put to its own use. See also WAC 458-20-102 for additional information regarding tax-reporting requirements for "purchases for dual purposes."

(4) **What are the use tax liabilities of consumers for services on tangible personal property?** Effective June 1, 2002, consumers of services performed on property outside Washington are subject to use tax if the tangible personal property is then used in this state. RCW 82.12.020. A credit, however, is allowed for the amount of retail sales tax or use tax due and paid by a consumer, for services on tangible personal property, to any other state or political subdivision thereof, the District of Columbia, or any foreign country, prior to the use of the tangible personal property in this state. See RCW 82.12.035.

(a) **What is the measure of tax?** The measure of use tax is "value of the service used," which is the purchase price for the service. RCW 82.12.010. "Purchase price" includes delivery charges by the seller of the service. RCW 82.08.010 and 82.12.010. (See WAC 458-20-110 for more information on delivery charges.) If the purchase price does not represent true value of the services, then the value of the service used must be determined as nearly as possible according to the retail selling price at place of use of similar services of like quality and character. RCW 82.12.010.

(b) **When does use tax liability arise?** Use tax liability on services of tangible personal property arises at the time the consumer first uses the tangible personal property in Washington upon which the services have been performed. Use includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or

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consumption of the tangible personal property within the state.  
RCW 82.12.010.

(c) **What is the use tax rate?** The use tax rate is the same as the combined state and local retail sales tax rate where the property is first used in Washington. Generally, this would be the location the consumer takes delivery of the item. Persons should refer to WAC 458-20-145 for more information on determining the applicable tax rate.

(d) **Remitting a use tax liability.** Persons who are registered with the department should report their use tax liabilities on their excise tax returns. Persons who are not registered with the department (see WAC 458-20-101 regarding tax registration and tax reporting requirements) may obtain forms and instructions for filing consumer use tax returns from the department in Olympia or to any of its branch offices. An excise tax return or a consumer use tax return with instructions may also be obtained via the department's Internet website at [www.dor.wa.gov](http://www.dor.wa.gov).

(5) **How to distinguish services on tangible personal property from manufacturing or other activities?** Whether a taxpayer is performing services on tangible personal property or is engaging in manufacturing or other activity depends upon the nature of the activity. For instance, an activity is repairing or altering, if the result achieved merely extends a utility already had by the product upon which the activity is being performed.

If physical assembly of products performed in Washington merely alters or improves tangible personal property by making the property different in detail but not in substance, then the activity is a service on tangible personal property. For example, changing beams of a crane to accommodate different sizes of containers for loading or unloading purposes is alteration of a crane, which is a service on tangible personal property. Also, if physical assembly of products constitutes installation of tangible personal property, then the activity is a service on tangible personal property.

On the other hand, physical assembly of products from various components is manufacturing or processing for hire, if the physical assembly results in a "new, different, or useful" product, even though the cost of the assembly may be minimal when compared with the costs of the components. Refer to WAC 458-20-136 for more information on the combining and/or assembly of products to achieve a special purpose as a manufacturing activity.