

Preliminary Draft—For Discussion Purposes Only

NEW SECTION

WAC 458-20-17801 Use Tax Exemptions. (1) **Introduction.** This rule identifies the use tax exemptions provided by chapter 82.12 RCW. Use tax exemptions frequently, but not always, mirror the retail sales tax exemptions provided by chapter 82.08 RCW for purchases of the same items. However, use tax is due if an item is used for a purpose other than the one provided by the statute.

Various rules address a broad range of tax reporting responsibilities of certain industries or those related to certain activities. When appropriate, this rule refers the reader to those rules. In addition, the reader may wish to refer to the following:

(a) RCW 82.04.190 (“Consumer”), defining the term “consumer.”

(b) WAC 458-20-178 (Use tax), discussing the general nature of the tax, the measure of the tax, and reporting requirements.

(c) WAC 458-20-17802 (Collection of use tax by county auditors and department of licensing—Measure of tax), discussing how county auditors, subagents, and the department of licensing determine true value for purposes of collecting the use tax.

(d) WAC 458-20-192 (Indians—Indian reservations—Trust lands), discussing the use of tangible personal property by Indians and Indian tribes and the use of property acquired on Indian lands by nonIndians.

(e) WAC 458-20-211 (Leases or rental of tangible personal property, bailments), discussing bailment, the use of tangible personal property without consideration.

(f) WAC 458-20-221 (Collection of use tax by retailers and selling agents) discussing the tax-reporting responsibilities of persons required to collect or voluntarily collecting Washington’s use tax from buyers as agents of the state of Washington.

(2) **Exclusions from use tax.** RCW 82.04.050 excludes certain purchases of tangible personal property from the definition of “retail sale.” Examples include, but are not limited to, items purchased for resale in the normal course of the buyer’s business without intervening use and ingredients or components of tangible personal property produced for sale. A buyer may give the seller a resale certificate and purchase these items at wholesale. These items are not subject to use tax if the purchaser “uses” the items for the purpose provided by the statute. Any other use is subject to the use tax, unless specifically exempt by law. Refer also to WAC 458-20-102 (Resale certificates) for more information regarding those items that may be purchased at wholesale.

(3) **Exemptions based on nonresident status.** This subsection explains the use tax exemptions available to nonresidents and certain military personnel. These focus on the use of property by nonresident individuals (natural persons) rather than by nonresident business entities.

(a) **Who is a nonresident?** For purposes of this subsection, a “nonresident” is a natural person who is not a resident. A “resident” is a person who lives or shows intent to live or be located in this state on more than a temporary or transient basis. A person may be a resident of this state even though the person has or claims residency or domicile in another state or intends to leave this state at some future time.

(i) A natural person is presumed to be a resident of this state if the person satisfies any of the following:

(A) Maintains a residence in this state for personal use;

(B) Registers to vote in this state;

Preliminary Draft—For Discussion Purposes Only

- (C) Possesses a Washington State driver’s license;
 - (D) Uses a Washington State address for federal or state income tax purposes;
 - (E) Receives benefits under one of this state’s public assistance programs;
 - (F) Lacks a permanent place of residence outside Washington and previously maintained a residence in this state for personal use (for example, a person who retires and lives in a motor home or vessel that is not permanently attached to any property);
 - (G) Claims this state as residence for eligibility to hold a public office, or for judicial actions;
 - (H) Claims this state as residence for obtaining a Washington State hunting or fishing license;
 - (I) Receives tuition fees at resident rates in this state, unless the nonresident tuition fee differential is waived as a result of a state to state reciprocity program authorized under chapter 28B.15 RCW (College and University Fees); or
 - (J) Is a custodial parent with a child attending public schools in this state.
- (ii) To overcome a presumption of residency, the person must show by clear and convincing evidence that he or she does not intend to be located in this state on more than a temporary or transient basis. The evidence must include objective facts such as, but not limited to, the person’s mailing address, the location and registration of motor vehicles, the nature and use of real property maintained in this state, the time spent in this state, the location of personal items, citations in wills or other legal documents, statements made to insurance companies and financial institutions concerning residency, employment or active business involvement, the location and use of bank accounts, and the nature and level of telephone and utility service.
- (iii) The Department may consider factors other than those listed in subsection (i) above to determine that a person intends to be located in this state and thus be a resident of this state, but such other factors do not alone raise a presumption of residency.
- (b) **Temporary use of property in this state by nonresidents.** In general, a nonresident is not subject to use tax if he or she temporarily brings property into this state for personal use while temporarily in the state. Both the property and the nonresident must be temporarily within this state for the exemption to apply. RCW 82.12.0251.
- This exemption does not apply if the nonresident uses property to conduct a nontransitory business activity within Washington. The term “nontransitory business activity” means and includes extracting, manufacturing, selling tangible personal property and intangible property, printing, publishing, and the performance of contracts for constructing or improving real or personal property. The term does not include the business of conducting a circus or other form of amusement when the personnel and property of such business regularly moves from one state into another, nor does it include casual or incidental business done by a nonresident lawyer, doctor, or accountant.
- Nonresidents temporarily using watercraft in Washington waters should refer to WAC 458-20-238 for information specific to their use of watercraft.
- (c) **Motor vehicles or trailers.** The use by a nonresident (refer to Subsection (3)(a) of this rule) of a motor vehicle or trailer that is currently registered or licensed in the state of his or her residence is exempt from the use tax, provided the vehicle or trailer is not required to be registered or licensed under the laws of this state. RCW 82.12.0251. This exemption also applies to the use of motor vehicles or trailers that are exempt from registration requirements pursuant to a declaration issued by the department of licensing

Preliminary Draft—For Discussion Purposes Only

under RCW 46.85.060. Persons using motor vehicles, watercraft, aircraft, and certain other tangible personal property in Washington should refer to Title 46 RCW (Motor Vehicles), Title 308 WAC (Department of Licensing), and/or contact the Washington state department of licensing for information regarding licensing requirements. Information about vehicle titles and registration is also available on the Internet at <http://www.wa.gov/dol/>.

(i) If a husband and wife live apart and one becomes a resident of another state, use tax is due on either spouse's use of a vehicle (or other tangible personal property) in this state if the marital community has an interest in the vehicle. If the spouses have renounced their marital relationship and are living separate and apart within the meaning of RCW 26.16.140, temporary use in Washington of a vehicle which is the separate property of the nonresident spouse is exempt from use tax.

(ii) In contexts other than those involving marital or former marital property, use tax applies to the use of a vehicle if a Washington resident is a joint owner of a vehicle that is also owned by a nonresident. However, taxable use of property does not occur if the name of a Washington resident appears on the title solely for estate planning or financing purposes.

(iii) A corporation, trust or other entity created by a natural person who is a resident of Washington is considered a resident of Washington for use tax if the only purpose of the entity is to register a venture.

(d) **Property acquired prior to being stationed in or becoming a resident of Washington.** A person who moves to this state, either as a resident or as a nonresident member of the military stationed in this state, generally does not owe use tax for the use of household goods, personal effects, or private motor vehicles acquired while a bona fide resident of another state. For the exemption to apply, the person must both acquire and use the property in another state more than ninety days prior to the time the person enters Washington. RCW 82.12.0251.

For the purposes of this exemption:

(i) "Private motor vehicles" includes motorcycles and mopeds used for personal transportation upon the public streets and highways. The term does not include vehicles licensed to business entities, nor does it include fifth-wheel trailers or other property that is not motor-propelled. RCW 82.12.0251 specifically excludes motorhomes from this exemption.

Before July 1, 1997, RCW 82.12.0251 used the term "private automobiles" instead of "private motor vehicles." The term "private automobiles" did not include motorhomes, motorcycles, and fifth-wheel trailers.

(ii) "State" means a state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof.

(iii) A person "enters" Washington when the person enters this state with the intent to reside in this state; and it also means when a nonresident member of the military is both stationed and residing in this state.

(e) **Motor vehicles acquired by Washington residents stationed outside this state.** Use tax does not apply if a Washington resident, who is a member of the armed services, acquires a motor vehicle or trailer while residing and stationed outside this state under military orders. For the exemption to apply, the resident military person must

Preliminary Draft—For Discussion Purposes Only

acquire the motor vehicle or trailer at least thirty days before being discharged or released from active duty. This exemption does not apply if the resident is called to active duty for training purposes for less than six months. RCW 82.12.0266.

(4) **Agricultural industry.** The statute provides several use tax exemptions for the agricultural industry. Readers should refer to WAC 458-20-122 (Sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use) and WAC 458-20-262 (Retail sales and use tax exemptions available for agricultural employee housing) for further information regarding these exemptions. While WAC 458-20-122 does not provide a specific list of the use tax exemptions, it does identify the complementary retail sales tax exemptions.

In addition to the exemptions discussed in WAC 458-20-122 and WAC 458-20-262, other agricultural industry-related exemptions include:

(a) The use of materials and supplies by agents or independent contractors in packing fresh perishable horticultural products for farmers. RCW 82.12.0311 . See also WAC 458-20-214 (Cooperative marketing associations and independent dealers acting as agents of others with respect to the sale of fruit and produce);

(b) Lease payments made under a sale/leaseback agreement for property, including equipment and components, used by the seller/lessee primarily for canning, preserving, freezing, or dehydrating fresh fruits, vegetables, or fish. The exemption also applies to the purchase amount paid by the lessee pursuant to an option to purchase at the end of the lease term. The exemption is restricted to property upon which the seller/lessee previously paid the retail sales tax or use tax on the property at the time of original acquisition. RCW 82.12.0295. See also WAC 458-20-211 (Leases or rentals of tangible personal property); and

(c) Effective March 22, 2000, through December 31, 2006, RCW 82.12.840 exempts the use of machinery and equipment, or tangible personal property that becomes an ingredient or component of eligible machinery and equipment used more than half of the time:

(i) For gathering, densifying, processing, handling, storing, transporting, or incorporating straw or straw-based products that will result in a reduction in field burning of cereal grains and field and turf grass grown for seed; or

(ii) To decrease air emissions resulting from field burning of cereal grains and field and turf grass grown for seed.

(5) **Commercial fishing.** RCW 82.12.0254 provides a use tax exemption for watercraft and component parts used in commercial deep-sea fishing operations outside the territorial waters of the state. RCW 82.12.0298 provides a use tax exemption for diesel fuel used in operating watercraft in commercial deep sea fishing or commercial passenger fishing boat operations outside the territorial waters of the state. Refer to WAC 458-20-176 (Commercial deep-sea fishing—Commercial passenger fishing—Diesel fuel) for further information.

(6) **Construction.** The following rules explain both the application of use tax to persons conducting construction activities and any exemptions relating to those activities:

(a) WAC 458-20-170(Constructing and repairing of new or existing buildings or other structures upon real property); and

(b) WAC 458-20-17001 (Government contracting—Construction, installations, or improvements to government real property).

Preliminary Draft—For Discussion Purposes Only

(c) WAC 458-20-171 (Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic).

(d) WAC 458020-172 (Clearing land, moving earth, cleaning, fumigating, razing or moving existing buildings and janitorial services).

(7) **Energy conservation.** To encourage energy conservation, the statute provides use tax exemptions for use of the following:

(a) Machinery and equipment used in wind, landfill gas, and solar energy electrical generation facilities. RCW 82.12.02567. Refer to WAC 458-20-263 (Wind, landfill gas, and solar energy electric generating facilities sales and use tax exemption) for further discussion;

(b) Returnable containers for beverages and foods, including containers for soft drinks, milk, beer and mixers. RCW 82.12.0276. Refer to WAC 458-20-115 (Sales of packing materials and containers); and

(d) Ride-share vehicles. RCW 82.12.0282. Refer to WAC 458-20-261 (Exemptions and credits for ridesharing, public transportation, and nonmotorized commuting) for further discussion.

(8) **Food products and certain prepared meals.** RCW 82.12. 293 and RCW 82.12.0297 provide use tax exemptions for the use of food products for human consumption and eligible foods purchased with food stamps, respectively. Use tax exemptions are also available for prepared meals provided under a state administered nutrition program for the aged to senior citizens, disabled persons, or low income persons by certain not-for-profit organizations. Refer to WAC 458-20-119 (Sales of meals) and 458-20-244 (Food products) for further explanation.

(9) **Interstate or foreign commerce transportation equipment.** The statute provides specific use tax exemptions for the following:

(a) **Airplanes, locomotives, railroad cars, and watercraft.** Airplanes, locomotives, railroad cars, and watercraft, and their component parts, that are used primarily to transport persons and property for hire in interstate or foreign commerce. RCW 82.12.0254. Refer to WAC 458-20-175 (Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce) for additional information.

(b) **Motor vehicles.** Motor vehicles used substantially for transporting persons or property for hire across the boundaries of this state by the holder of a permit issued by the Interstate Commerce Commission (ICC) or its successor agency. The exemption also applies to component parts of motor vehicles used by a holder of a carrier permit issued by the ICC or its successor authorizing transportation by motor vehicle across the boundaries of this state. RCW 82.12.0254. Refer to WAC 458-20-17401 (Use tax of motor carriers operating in interstate or foreign commerce for motor vehicles, trailers, parts, etc.) for further explanation.

(c) **Motor vehicles used by persons with places of business within and without this state.** RCW 82.12.0254 also provides a use tax exemption for the use by a nonresident of this state of motor vehicles or trailers used to transport persons or property in interstate or foreign commerce, subject to a number of conditions and restrictions. Unlike the exemption discussed in (b) of this subsection, this exemption does not require that the

Preliminary Draft—For Discussion Purposes Only

motor vehicles or trailers be used to transport persons or property on a for-hire basis. All of the following conditions and restrictions must be satisfied for the exemption to apply.

(i) The "nonresident" user must have one or more places of business in this state as well as in one or more other states.

(ii) The motor vehicle or trailer must be used exclusively in transporting persons or property across the boundaries of this state, and in intrastate operations incidental thereto.

(iii) The motor vehicle or trailer must be registered and licensed in a foreign state.

(iv) Only those vehicles or trailers most frequently dispatched, garaged, serviced, maintained, and operated from the user's place of business in another state are eligible for the exemption.

(v) Use of the vehicle or trailer in this state is limited to fifteen consecutive days. However, the department may grant fifteen additional days consecutive to the original period of use when it receives a written application in any of its local district offices before the original period of use expires. The application must explain the reasons for the request and include: the name and, if applicable, the UBI number of the registered owner; the name of the foreign state in which the motor vehicle or trailer is registered; the license number, make, and model; the purpose of use in Washington; and the dates of first and anticipated last use in Washington.

(10) **Housing.** Most housing is exempt from use tax because it is real property rather than tangible personal property. Refer to WAC 458-20-118 (Sale or rental of real estate, license to use real estate) for further discussion. In addition, the statute provides use tax exemptions for certain mobile homes and for floating homes which are otherwise subject to use tax.

(a) **Used mobile homes.** RCW 82.12.033 provides a use tax exemption for the use of a used mobile home.

(i) For use tax purposes, a mobile home is used if, for real estate excise tax purposes, the home is treated as real property. RCW 82.45.032 provides that a mobile home is "used" if it was previously sold at retail and retail sales tax was paid as provided by chapter 82.08 RCW. A mobile home is also "used" if it was previously used and use tax was paid as provided by chapter 82.12 RCW. In addition, the mobile home must have substantially lost its identity as a mobile unit at the time of sale. This occurs when the mobile home is attached to land owned or leased by the mobile home owner and is placed on a foundation (posts or blocks) with fixed pipe connections for sewer, water, and other utilities;

This exemption does not apply to a mobile home dealer's withdrawal of a mobile home from inventory for attachment to land and subsequent sale or rental as real estate.

(ii) RCW 82.12.033 also exempts the use of any mobile home acquired by rental or lease. The exemption applies only if rental or lease agreement exceeds thirty days and the lessee does not use if the rental or lease of the mobile home to conduct transient lodging activities.

(b) **Used floating home.** RCW 82.12.034 provides a use tax exemption for the use of a used floating home. A "used floating home" is a building on a float used in whole or in part for human habitation as a single-family dwelling. RCW 82.45.032. The building cannot be designed for self propulsion by mechanical means or for propulsion by means of wind. In addition, it must be on the property tax rolls of the county in which it is located.

Preliminary Draft—For Discussion Purposes Only

(11) **Manufacturing, research and development.** The following exemptions are available for the use of certain manufacturing equipment and certain items consumed in research and development:

(a) Machinery and equipment that is used directly in a manufacturing operation or a research and development operation. RCW 82.12.02565. Refer to WAC 458-20-13601 (Manufacturers and processors for hire – Sales and use tax exemption for machinery and equipment) for information;

(b) Any article of tangible personal property used by a bailee that is entirely consumed in the course of research, development, experimental and testing activities conducted by the user, provided the acquisition or use of such articles by the bailor was not subject to sales or use tax. RCW 82.12.0265;

(c) Carbon, petroleum coke, coal tar, pitch and similar substances that become an ingredient or component of anodes or cathodes used in producing aluminum for sale. RCW 82.12.02568.

(12) **Medical and health care.** The law provides several use tax exemptions for the medical and health care practitioners and patients. WAC 458-20-168 (Hospitals, medical care facilities, and adult family homes) and 458-20-18801 (Prescription drugs, prosthetic and orthotic devices, ostomic items, and medially prescribed oxygen) discuss these exemptions.

(13) **Motion picture production equipment.** RCW 82.12.0315 provides a use tax exemption for the use of production equipment rented to, but not sold to, a motion picture or video production business. The statute also exempts the use of production equipment acquired and used by a motion picture or video production business in another state, if the acquisition and use occurred more than ninety days before the time the motion picture or video production business entered this state. This exemption does not apply to production equipment used by a motion picture or video production business that engages, to any degree, in the production of erotic material.

For the purposes of this exemption:

(a) “Production equipment” means the following when used in motion picture or video production or post production: Grip and lighting equipment, cameras, camera mounts including tripods, jib arms, steadicams, and other camera mounts, cranes dollies, generators, helicopter mounts, helicopters rented for motion picture or video production, walkie talkies, vans and trucks specifically equipped for motion picture or video production, wardrobe and makeup trailers, special effects and stunt equipment, video assists, videotape recorders, cables and connectors, telepromoters, sound recording equipment, and editorial equipment. RCW 82.08.0315.

(b) “Motion picture or video production business” means a person engaged in the production of motion pictures and video tapes for exhibition, sale or for broadcast by a person other than the person producing the motion picture or video tape. RCW 82.08.0315.

(c) “Erotic material” means printed material, photographs, pictures, motion pictures, sound recordings, and other materials the dominant theme of which taken as a whole appeals to the prurient interest of minors in sex; which is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters or sado-masochistic abuse; and is utterly without redeeming social value. RCW 9.68.050.

Preliminary Draft—For Discussion Purposes Only

(14) **Motor vehicle and other fuels.** Use tax exemptions are available for the following:

(a) The use of motor vehicle fuel, special fuels, and nonpollutant fuels on public highways as defined by RCW 82.36.010 and RCW 82.38.010. RCW 82.12.0256. See WAC 458-20-126 for more information on motor vehicle, special, and nonpollutant fuels; and

(b) The use of fuel by the extractor or manufacturer of the fuel when used directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the fuel. RCW 82.12.0263. See also the discussion on the taxability of fuel in WAC 458-20-121 (Sales of heat or steam—Including production by cogeneration).

(15) **Nonprofit organizations.** In general, nonprofit organizations must collect retail sales tax and pay use tax the same as for-profit organizations. Specific use tax exemptions are available to certain nonprofit organizations for fund-raising and other activities and to persons making certain donations of tangible personal property to nonprofit organizations. Refer to WAC 458-20-169 (Religious, charitable, benevolent, nonprofit service organizations, and sheltered workshops) and WAC 458-20-249 (Artistic or cultural organizations) for information.

(16) **Schools and government entities.** Use tax exemptions that are available for schools and state and local governmental entities are discussed in WAC 458-20-167 (Educational institutions, school districts, student organizations, and private schools) and WAC 458-20-189 (Sales to and by the state of Washington, counties, cities, towns, school districts, and fire districts). While WAC 458-20-189 does not provide a specific list of all available use tax exemptions, it does identify the complementary retail sales tax exemptions.

(17) **Vessel manufacturers and dealers.** Effective July 28, 1997, certain uses of a vessel that is held for resale by a vessel manufacturer or a vessel dealer registered under chapter 88.02 RCW are exempt from use tax. Likewise, use tax does not apply to trailers and similar apparatus used to transport, display, show, or operate a vessel when the vessel is used for an exempt purpose. RCW 82.12.800 and 82.12.801.

(a) A dealer or manufacturer claiming the use tax exemptions must keep appropriate records (e.g., vessel logs, earnest money agreements, and/or demonstration permits) documenting that a particular vessel is truly held for sale. The use of a vessel for purposes other than those identified by RCW 82.12.800 and 82.12.801 is subject to use tax. The use of trailers and similar apparatus to transport, display, show, or operate a vessel used for the following exempt purposes is also exempt from the use tax, provided the trailers or apparatus are (dealer) or are to be (manufacturer) held for sale. The use tax exemptions for the use of vessels by vessel dealers and vessel manufacturers are limited to the following uses or activities:

(i) Testing, setting-up, repairing, remodeling, evaluating, or otherwise making a vessel seaworthy. In the case of a manufacturer, exempt activities also include performance, endurance, and sink testing.

(ii) Training employees, or agents. In the case of a manufacturer, this includes training subcontractors involved with the development and manufacturing of the manufacturer's vessels. In the case of a vessel dealer, this includes training subcontractors involved with the sale of the dealer's vessels.

Preliminary Draft—For Discussion Purposes Only

(iii) Promoting the sale of the manufacturer's or dealer's vessels. Promotional activities include photography and video sessions for promotional materials, direct travel to and from promotional vessel events for the express purpose of displaying the vessel. A dealer claiming this exemption must display, on the vessel, notification that the vessel is for sale and the registered dealer's identification.

(iv) Loaning or donating any vessel to a civic, religious, nonprofit, or educational organization for continuous periods of use not to exceed seventy-two hours, or longer if approved by the department. The loan or donation of vessels to a government entity is exempt of tax with no restriction on the period of the loan or donation.

(v) Directly transporting, displaying, or demonstrating a vessel at a wholesale or retail vessel show.

(vi) Delivering a vessel to a buyer, vessel manufacturer, registered vessel dealer as defined in RCW 88.02.010, or to any other person involved in the manufacturing or selling of that vessel for the purpose of the manufacture or sale of that vessel.

(vii) Displaying, showing, and operating a vessel for sale to a prospective buyer to include the short-term testing, operating, and examining by a prospective buyer.

(b) The following identify circumstances under which the use of a vessel does not generally satisfy the statutory restrictions provided by RCW 82.12.800 and 82.12.801. These are provided only as a general guide. A determination of whether use tax applies can only be made after a review of all of the facts and circumstances.

(i) Operating an "employee training" session during a sporting event;

(ii) Stopping overnight at an island resort before returning an inventory vessel to a storage location;

(iii) Conducting sea trials or operating tests which include activities or ports of call above and beyond testing needs; and

(iv) Fishing while showing a vessel to a potential customer.

(18) **Miscellaneous.** Miscellaneous use tax exemptions include use of the following:

(a) Gun safes. For the purposes of this exemption, the term "gun safes" means an enclosure specifically designed or modified for the purpose of storing a firearm and equipped with a padlock, key lock, combination lock, or similar locking device which, when locked, prevents the unauthorized use of the firearm. RCW 82.12.832;

(b) Newspapers. RCW 82.12.0345;

(c) Tangible personal property held for sale and displayed in single trade shows for a period not in excess of thirty days, the primary purpose of which is to promote the sale of products or services. RCW 82.12.0272; and

(d) Wearing apparel used only as a display sample for the purpose of effecting sales of goods represented by the sample. RCW 82.12.0271.