

THIS PROPOSED RULE IS SUBMITTED FOR PUBLIC COMMENTS AFTER INPUT FROM INTERESTED PARTIES AND IS TO BE USED SOLELY FOR DISCUSSION PURPOSES AT THE PUBLIC HEARING ON THE PROPOSED RULE. UNDER NO CIRCUMSTANCES IS THIS PROPOSED RULE TO BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS.

AMENDATORY SECTION (Amending Order ET 83-15, filed 3/15/83)

WAC 458-20-145 Local sales and use tax. ((RCW 82.14.030 authorizes counties and cities to levy local sales and use taxes, such local taxes to be collected along with the state tax. By RCW 82.14.045 cities and counties, after voter approval, are authorized to levy an additional tax to finance public transportation, which tax is also to be collected along with the state tax. (See WAC 458-20-237.)

As used herein the term "local tax" shall include either or both the local taxes and transportation sales and/or use taxes. The rule and examples in this administrative rule apply equally to all locally imposed sales and use taxes.

The total tax is to be reported and paid to the state. The local tax portion will be rebated to local governments according to information which retailers show on tax returns. If a business is such that a local tax will be collected for more than one taxing jurisdiction, it is necessary to keep a record of retail sales taxable to each such county or city. Vendors are responsible for determining the appropriate tax rate for each locality in which sales are made and for collecting from their purchasers the correct amount of tax due upon each sale.

"Place of sale" for purposes of local sales tax:

Rule I. Retailers of goods and merchandise: The sale occurs at the retail outlet at which or from which delivery is made to the consumer.

Rule II. Retailers of labor and services (e.g., construction contractors, repairmen, painters, plumbers, laundries, earth movers, fumigators, house wreckers or movers, tow truck operators, hotels, motels, tourist courts, trailer camps, amusement and recreation businesses listed in WAC 458-20-183; abstract, title insurance, escrow, credit bureau, auto parking, and storage garage businesses): The retail sales occurs where the labor and services are primarily performed.

Rule III. Retailers leasing or renting tangible personal property: The sale occurs at the place of first use by the lessee or renter. For practical purposes the place of business of the lessor will be deemed the place of first use for ordinary, short term rentals. If the rental or lease calls for periodic rental payments, then the place of sale is the primary place of use by the lessee or renter for each period covered by each payment.

"Place of use" for purposes of the use tax:

Rule IV. Whenever the state use tax is due, the local use

~~tax will also apply where the property is first used in a county or city levying the local tax.~~

~~The following illustrates the application of these rules in various situations:~~

~~Rule I.~~

~~(A) This rule applies to retail sales consisting solely of tangible personal property (i.e., goods or merchandise). If retail labor and services are also involved Rule II applies to the entire sale. Secondly, the total tax is determined by the place at which or from which delivery is made. For most retailers the location of his place of business governs the local tax application. He collects the tax if his place of business is in a jurisdiction levying the local tax, even though he may deliver the goods sold to his customer to a location in the state not levying the tax. On the other hand a merchant whose place of business is in a jurisdiction not levying the local tax collects only the state tax, irrespective of whether delivery is made into a jurisdiction levying the local tax.~~

~~To sum up this part of the rule: The origin of the goods determines the local tax and destination or fact of delivery elsewhere in the state are immaterial.~~

~~(B) Special applications of the rules for goods located outside the state:~~

~~(1) When the state business and occupation tax applies to a sale in which the goods are delivered into Washington from a point outside the state this means a local in-state facility, office, outlet, agent or other representative even though not formally characterized as a "salesman" of the seller participated in the transaction in some way, such as by taking the order, then the location of the local facility, etc., will determine the place of sale for purposes of the local sales tax. However, if the seller, his agent or representative maintains no local in-state facility, office, outlet or residence from which business in some manner is conducted, the local tax shall be determined by the location of the customer.~~

~~(2) If the state business and occupation tax does not apply because there was no in state activity in connection with the sale (e.g., an order was sent by a Washington consumer directly to a seller's out-of-state branch) the state tax due is use tax and the destination address of the consumer determines the applicable local use tax.~~

~~Rule I examples:~~

~~(1) A resident of Everett purchases a sofa from a furniture dealer in Seattle. The dealer delivers the sofa to the customer's home in Everett. The Seattle local sales tax applies, being the place from which the goods were delivered.~~

~~(2) A resident of Olympia purchases a refrigerator from a~~

merchant in Tekoa. If Tekoa has not levied the local sales tax, the merchant will collect only the state sales tax. Olympia's use tax is not due even though the property will be used there. Reason: The law makes the local tax collectible at time of the taxable event for the state tax.

~~Rule II.~~

~~This rule applies to retail sales of labor or services and also applies to sales of tangible personal property when labor and services are rendered in conjunction therewith. The local tax is governed by the place where the labor and services are primarily performed.~~

~~(A) Retailers who primarily render their services at their place of business will collect the local sales tax if they are located in a jurisdiction which levies the tax. Examples of retailers normally falling in this class: Auto repair shops, hotels, motels, amusement or recreation businesses, title insurance, credit bureau, escrow businesses, auto parking, storage garages, laundries.~~

~~(B) Retailers primarily performing their services at the location of their customers will collect the local sales tax for the jurisdiction in which the customer is located. Examples of this class of retailers are: Construction contractors, painters, plumbers, carpet layers (retailers who install what they sell, as carpet layers often do, fall under Rule II place where work is done governs the local tax to be applied if the installation would normally call for an extra charge) earth-movers, house wreckers.~~

~~Examples:~~

~~(1) A dealer sells a TV set, delivers it and puts it in working order in his customer's home. This falls under Rule I, not Rule II, because there is normally no extra charge for "installing" a TV set.~~

~~(2) A hardware store sells yard fencing at \$5.00 per running foot including installation. This falls under Rule II because fence installation normally would involve an extra charge.~~

~~(3) A home furnishings dealer sells carpeting at \$12.00 per yard and agrees to install it for \$2.00 per yard additional. The entire transaction falls under Rule II and the \$14.00 per yard will be subject to the local tax levied by the jurisdiction in which the customer resides. Rule I is limited to retail transactions consisting **solely** of sales of goods or merchandise.~~

~~(C) The primary place of performance for retailers whose services consist largely of moving or transporting is deemed to be the destination (place where the service is completed). Typical of this class are: Tow truck operators and house movers.~~

~~Examples:~~

~~(1) A towing service is called to pick up a stalled vehicle just outside the city of Reardan and deliver the vehicle to an automotive repair shop in Spokane. Spokane's local tax applies.~~

~~(2) A housemover is hired to move a home from inside the Olympia city limits to a location 4 miles out of town in Thurston County. The housemover will collect only the state tax if Thurston County, the destination, does not levy the local tax.~~

~~Rule III.~~

~~This covers rentals or leases and has two parts, and it is important to distinguish "periodic rentals" from other rentals to know which part of the rule applies.~~

~~**Definition.** A periodic rental (or lease) is one in which the lessee or renter has contracted to make regular rental payments at specified intervals. These are normally longer term rentals calling for a rental payment monthly on or before a certain date.~~

~~(A) The place of sale for the ordinary, nonperiodic rental is the place of first use (the place where the lessee normally takes possession). In the interest of uniformity and simplicity this will be presumed to be the place of business of the lessor.~~

~~(B) The place of sale for the periodic rental is the primary place of use during each period covered by each periodic payment.~~

~~(1) In the case of business lessees this will be presumed to be the place of business of the lessee. Where the lessee has several places of business, the place of primary use will be deemed to be the place to which assigned or regularly returned.~~

~~(2) In the case of rentals to private individuals the place of use will be presumed to be the residence of the lessee or renter.~~

~~Examples:~~

~~(1) Acme Rent-all Co., located in Walla Walla, rents small tools, garden equipment, scaffolding, and many other kinds of tangible personal property. It charges \$2.00 per day for rental of a rototiller. This is not a periodic rental because the lessee merely makes a deposit and pays the full balance of the rent due upon returning the equipment. The lessor will collect the Walla Walla tax on all such rentals, irrespective of where the lessee lives or where the property will be used.~~

~~(2) An automobile dealer in Tacoma leases an automobile to a Seattle resident. The agreement calls for \$50.00 per month rental, payable by the 10th of each month. This is a periodic rental, so the place of primary use by the lessee governs collection of the local tax. The Tacoma dealer will collect the Seattle local tax.~~

Rule IV.

~~This rule applies only to transactions which are not subject to sales tax under Rule I, and intends that the local use tax shall be payable at the time and place the state use tax is due.~~

~~Examples:~~

~~(1) A Spokane resident purchases an automobile from a private individual in Seattle. He transfers title at the King County auditor's office and makes payment of the state use tax. The King County auditor will collect Spokane's local use tax at the same time.~~

~~(2) A Sumner resident places an order with a catalog mail order outlet in Tacoma. The Tacoma local sales tax is due since the transaction falls under Rule I, not Rule IV.~~

~~(3) Same as example 2 except the Sumner resident sends a catalog mail order directly to the Portland warehouse rather than going through the Tacoma catalog store. The vendor will collect Sumner's local use tax along with the state use tax.~~

~~The above explanation is intended to cover only the most frequently encountered situations. For more intricate or complicated transactions, call the nearest district office of the department of revenue for assistance.)~~ **(1) Introduction.**

Effective July 1, 2008, Washington implements new rules governing how local retail sales taxes are sourced within Washington. See RCW 82.32.730 and 82.14.490. These rules govern where the local retail sales tax attributable to the sale of tangible personal property, retail services, extended warranties, and the lease of tangible personal property is sourced.

"Source," "sourced," or "sourcing" refer to the location (as in a local taxing district, jurisdiction, or authority) where a sale or lease is deemed to occur and is subject to retail sales tax. The department assigns location codes to identify the specific taxing locations that receive the local taxes. These location codes are used on tax returns to accurately identify the correct taxing location and tax rate.

Sellers and their agents are responsible for determining the appropriate tax rate 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 that tax to the department.

Throughout this section the department provides a number of examples that identify facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined separately after a review of all of the facts and circumstances.

This section is divided into four subsections. Subsection

(1) contains this introduction, a description of department resources available to assist taxpayers in performing local sales tax sourcing, and certain key terms. Subsection (2) describes Washington's sourcing rules that become effective July 1, 2008. Subsection (3) provides information relating to the sourcing of telecommunication services. Finally, subsection (4) briefly explains Washington's use tax rule.

(a) What resources does the department offer to help sellers determine their local retail sales tax sourcing? 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 on the department's web site at www.dor.wa.gov under "get a form or publication." It provides a listing of all local taxing jurisdictions, location codes, 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 and location codes based on an address or a selected location on a map. It also allows users to download data that they can 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) Of what key terms should I be aware when reading this section?

(i) **"Receipt"** and **"receive"** mean taking possession of tangible personal property and making first use of services. "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser. See RCW 82.32.730 (8)(c).

(ii) **"Retail sale"** has the same meaning as provided in RCW 82.04.050 and includes the following three types of retail sales: Sales and leases 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 retail sales of labor and services rendered with respect to tangible personal property.

The following is a nonexclusive list of retail services, many of which are addressed in detail in other rules adopted by the department:

. Constructing, remodeling, or painting buildings (e.g., see WAC 458-20-170);

. Land clearing and earth moving (e.g., see WAC 458-20-172);

. Landscape maintenance and horticultural services (e.g., see WAC 458-20-226);

. Repairing or cleaning equipment (e.g., see WAC 458-20-173);

. Lodging provided by hotels and motels (e.g., see WAC 458-20-166);

. Amusement and recreation services such as golf, bowling, swimming, and tennis (e.g., see WAC 458-20-183);

. Physical fitness services such as exercise classes, personal trainer services, and the use of exercise equipment (e.g., see WAC 458-20-183); and

. Abstract, title insurance, or escrow services (e.g., see WAC 458-20-156).

(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 and includes prewritten software. See RCW 82.08.010(7), 82.08.950, and 82.12.950 for more information.

(v) **"Extended warranty"** is an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. See RCW 82.04.050(7).

(vi) **"Motor vehicle"** generally means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. Motor vehicles are vehicles capable of being moved upon public ways. "Motor vehicle" includes a neighborhood electric vehicle as defined in RCW 46.04.357. "Motor vehicle" includes a medium-speed electric vehicle as defined in RCW 46.04.295. An electric personal assistive mobility device is not considered a motor vehicle. A power wheelchair is not considered a motor vehicle. For more information see RCW 46.04.320 "Motor vehicle" and RCW 46.04.670 "Vehicle."

(vii) **"Primary property location"** is the property's physical address as provided 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. 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 jurisdictions.

(viii) "Transportation equipment" refers to:

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

(B) 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

(C) Aircraft operated by air carriers authorized and certificated by the U.S. Department of Transportation (or other federal or foreign authority) to carry people or property by air in interstate or foreign commerce; and

(D) Containers designed for use on and component parts attached or secured on the items described in (b)(viii)(A) through (C) of this subsection (1). RCW 82.32.730 (8)(d).

(2) Local retail sales tax sourcing. This subsection describes Washington's retail sales tax sourcing rules. Subsection (2)(a) of this section lists the general sourcing rules applicable to the sale of tangible personal property, retail services, and extended warranties. Subsection (2)(b) of this section provides special sourcing rules related to the sale of watercraft; mobile, modular, and manufactured homes; and motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment. Subsection (2)(c) of this section addresses the sourcing rules applicable to leases of tangible personal property.

(a) Sales of tangible personal property, retail services, and extended warranties. This subsection describes the sourcing rules applicable to the sale of tangible personal property, retail services, and extended warranties.

These rules apply in a descending order of priority. This means that the seller first should determine if (a)(i) of this subsection (Rule 1 below) applies. If it does apply, then the seller must source the sale under Rule 1. If Rule 1 does not apply, then the seller must source the sale to the location required under sourcing Rule 2 (below), and so forth until the applicable sourcing rule is determined.

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

The following rules apply when sourcing retail sales in

Washington:

(i) **Rule 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 rule will generally apply where a purchaser receives retail services at the seller's place of business, e.g., an auto repair shop, a hotel or motel, a health club providing physical fitness services, an auto parking service, a dry-cleaning service, and a storage garage. While these types of retail services are usually received at the seller's place of business, if services are received at a location other than the seller's place of business, then alternate sourcing rules will apply.

(A) **Examples: Rule 1 - Tangible Personal Property.**

(1) Bill, a Tacoma resident, travels to Renton and purchases a ring from a jeweler located in Renton. Bill receives the ring at the Renton location. The seller must source the sale to the Renton location.

(2) Mary, a Walla Walla resident, buys a prewritten software program from a store located in Cheney. Mary receives a compact disc containing the software at the Cheney location. The seller must source the sale to the Cheney location.

(3) Trains, Inc., an Auburn business, buys a locomotive that qualifies as transportation equipment. Trains, Inc. receives the locomotive in Fife at the seller's place of business. The seller must source the sale to the Fife location.

(B) **Examples: Rule 1 - Retail Services.**

(1) Barbara, 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 Barbara picks up the car from the Centralia location. The services are received in Centralia. The mechanic must source the sale to the Centralia location.

(2) Rex, a Seattle resident, drops off a roll of film at a photo developer located in Bellevue. Rex picks up the developed film from the Bellevue location. The services are received in Bellevue. The developer must source the sale to the Bellevue location.

(3) Bob, a Pasco resident, takes shirts to a drycleaner located in Kennewick. The drycleaner cleans and presses the shirts. Bob then picks up the shirts in Kennewick the following week. The services are received in Kennewick. The seller must source the sale to the Kennewick location.

(C) **Example: Rule 1 - Extended Warranties.**

(1) Saffron, a Des Moines resident, buys a computer from a Burien computer outlet. When purchasing the computer Saffron also purchases and receives a five-year extended warranty for the computer at the Burien outlet. The seller must source the

sale of the extended warranty and computer to the Burien location.

(ii) **Rule 2: Tangible personal property, retail services, or extended warranties received at a location other than the seller's place of business.** If the purchaser receives tangible personal property, retail services, or an extended warranty at a location other than the seller's place of business (and sourcing Rule 1 therefore does not apply), then the sale must be sourced to the location where the purchaser, or the purchaser's donee (e.g., a gift), receives such property, retail service, or extended warranty. This location can be a location indicated in instructions, known to the seller, for delivery to the purchaser or donee.

Construction contractors, painters, plumbers, 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 under this sourcing Rule 2 (presuming they provide their services at a location other than their place of business).

(A) **Examples: Rule 2 - Tangible Personal Property.**

(1) Wade, a Seattle resident, buys furniture from a store located in Everett. Wade has the furniture delivered to his Seattle residence. Wade receives the furniture at his location in Seattle. The seller must source the sale to Wade's Seattle residence.

(2) Joanne, a Port Angeles business owner, purchases a prewritten software program online from a store located in Sequim. Joanne receives the software at her home address in Port Angeles. The seller has information identifying the location where the software is electronically received by Joanne in Port Angeles. The seller must source the sale to Joanne's Port Angeles home location.

(3) Jean, a Tumwater resident, buys prewritten software to detect online security threats. The seller is a store located in Bothell. As part of the purchase price, Jean receives prewritten software updates. All software is electronically delivered. The seller does not know where the software is electronically delivered. However, the purchase order discloses a ship-to address where the software will be received in Tumwater. The seller must source the sale to Jean's ship-to address as this address represents a delivery location indicated in instructions for delivery to Jean. The seller must source the sale to the Tumwater location according to the ship-to address.

(4) Karl, a Spokane Valley resident, buys a mattress at a store in Spokane. The merchant delivers the mattress from its warehouse located in Deer Park to Karl's home in Spokane Valley. Karl receives the mattress at his home location in Spokane Valley. The seller must source the sale to the Spokane Valley

home location.

(5) George, an Olympia resident, orders a pizza from a restaurant located in Tumwater. The restaurant obtains George's Olympia address when taking the order. George receives the pizza at the Olympia address. The seller must source the sale to Olympia according to George's Olympia address.

(6) Gunther, a Sumner resident, places an order for towels with a catalog mail order outlet located in Tacoma. The seller delivers the towels to Gunther's home at a Sumner location from a warehouse in Fife. Gunther receives the towels at the Sumner location. The seller must source the sale to Gunther's Sumner home location.

(B) Examples: Rule 2 - Retail Services.

(1) Brett, a Tacoma resident, contracts with an Olympia painting firm to have his house repainted. The Olympia firm sends employees to Brett's home in Tacoma where they perform the painting. Brett receives the painting services at his home in Tacoma. The painting firm must source the painting services to Brett's Tacoma home location.

(2) Julie, an Aberdeen resident, hires a construction contractor to build a new business facility in Kelso. Julie receives the construction services at the Kelso location. The contractor must source the services to the Kelso construction location.

(3) Gabe, a Shoreline resident, sends a clock to a repair business located in Auburn. The business repairs the clock and then delivers the clock to Gabe's home in Shoreline. Gabe receives the services at the Shoreline location. The repair service must source the sale to Gabe's Shoreline home location.

(C) Example: Rule 2 - Extended Warranties.

(1) Tara, a Chelan resident, buys a computer over the internet. The retailer offers a five year extended warranty. Tara decides to purchase the extended warranty and sends the seller the appropriate paperwork. The seller then sends the extended warranty documents to Tara's home in Chelan. The sale of the extended warranty is sourced to the Chelan home location where Tara receives the warranty documents.

(D) Additional Examples: Rule 2 - Delivery Outside Washington, Gifts, and Receipt by a Shipping Company.

(1) Alan, a Spokane resident, buys a mattress at a store in Spokane. The merchant delivers the mattress from its warehouse located in Deer Park to Alan's vacation home in Idaho. The mattress was delivered outside of Washington and is not subject to Washington state and local sales tax. The seller does not source the sale to Washington.

(2) Sandra, a Vancouver, Washington resident, buys a computer online from a merchant in Seattle. The computer is a gift for Tim, a student attending college in Pullman. The purchaser directs the seller to ship the computer to Tim's home

address in Pullman. Tim receives the computer at the Pullman location. The merchant will source the sale based on the ship-to address in Pullman.

(3) Martha, a Wenatchee resident, travels to a gift shop in Leavenworth. Martha buys five (5) items for herself and five (5) gifts for friends. Martha takes possession of the five (5) items for herself at the gift shop. Martha then has the gift shop deliver the five (5) gifts to addresses located in Wenatchee. The seller will source the sale of the five (5) items purchased by Martha for herself to Leavenworth. The seller must source the five (5) gifts to Wenatchee according to the ship-to address where each donee receives its gift.

(4) Sheila, a Yakima resident, buys equipment from a Pasco retailer. Sheila arranges to have a shipping company pick up the equipment and deliver that equipment to Sheila in Yakima. In the purchase order Sheila notifies the seller that the equipment will be received at a ship-to address in Yakima. Tangible personal property is not considered received at the seller's place of business in cases where the purchaser arranges to have the goods picked up by a shipping company on its behalf. The seller must source this sale to Sheila's ship-to Yakima location where the equipment is received.

(iii) **Rule 3: Purchaser's address maintained in the seller's ordinary business records.** If neither sourcing Rule 1 nor Rule 2 apply, a retail sale is sourced to the purchaser's address as 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 - Rule 3.

(1) Shannon buys prewritten software from a Bellevue seller by downloading the software from the seller's web site. Shannon's location is unknown at the time of sale. However, the seller maintains a Seabeck address for Shannon in its business records. Because Shannon does not receive the software at the seller's place of business and the location of receipt is unknown, sourcing Rules 1 and 2 do not apply. The seller must source the sale to the address maintained in its ordinary business records for Shannon (the Seabeck address).

(iv) **Rule 4: Purchaser's address obtained at the consummation of sale.** If any of sourcing Rules 1 through 3 do not apply, the sale is sourced to the purchaser's address obtained during the consummation 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 - Rule 4.

(1) Eric buys prewritten software over the internet from a retail outlet located on Vashon Island. The seller transmits

the prewritten software to an e-mail address designated by Eric. The e-mail address does not disclose Eric's location. Eric pays for the software by credit card. When entering the relevant credit card information, Eric discloses a residential address in Port Angeles to which the credit card is billed. Sourcing Rules 1 and 2 do not apply because Eric does not receive the software at the seller's business location and the seller does not know where the software is being received. Sourcing Rule 3 does not apply because the retail outlet does not have Eric's address on file in its ordinary business records. Therefore, the retail outlet must source the sale to the address related to the customer's credit card information given during the consummation of the sale. The retail outlet must source the sale to Eric's Port Angeles location.

(v) Rule 5: Origin sourcing default rule. If a seller is unable to source a sale under any of the sourcing Rules 1 through 4 above, or the seller has insufficient information to apply those rules, the default origin sourcing rule applies. Subsection (2)(b)(v)(A) through (C) of this section describes sourcing Rule 5 as it applies to the sale of tangible personal property, retail services, and extended warranties.

(A) Origin sourcing: Tangible personal property. If any of sourcing Rules 1 through 4 do not apply, the seller must source sales of tangible personal property to the address from which the property was shipped.

(B) Origin sourcing: Electronically delivered prewritten software. If any of the sourcing Rules 1 through 4 do not apply, the seller must source sales of electronically delivered prewritten computer software to the address from which the computer software was first made available for transmission by the seller. Locations that merely provide for the transfer of computer software, and are not the address from which the seller made the computer software first available for transmission, will not be used.

(C) Origin sourcing: Retail services and extended warranties. If any of sourcing Rules 1 through 4 do not apply, the seller must source retail services and extended warranties to the address from which it provides the service or warranty.

(D) Examples: Rule 5 - Prewritten Software.

(1) Rebecca purchases prewritten computer software electronically and requests that the software be delivered to a specified e-mail address. The seller operates from a retail store located in Tacoma. The seller does not know the location where the software will be received and further does not have information about Rebecca's location in its ordinary business records. Additionally, Rebecca does not supply the seller with address information during the consummation of the sale. Thus, none of sourcing Rules 1 through 4 apply. This sale must be sourced under the default sourcing rule. The seller first made

the prewritten software available for transmission from a server housed at its Tacoma location. The seller will source the sale to that Tacoma location from which the prewritten software was first transmitted. This result will not change if the software is routed from the Tacoma server through a second server (either operated by the seller or some third party) located outside of the Tacoma location. Routing as used in this context refers to the transfer of prewritten software from one location to another location for retransmission to a final destination, and does not include transfers to another location where additional services or products may be added.

(2) Assume the facts in Example (1) directly above, except that Rebecca's order is submitted to the Tacoma location and the transmission of the prewritten software originates from a Bellevue location. The seller first made available for transmission the prewritten software from a server housed at its Bellevue location. The seller will source the sale to the Bellevue location.

(b) Special sourcing rule: Sales of watercraft; modular, mobile, and manufactured homes; and motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment. If you are making a retail sale of watercraft; modular, mobile, or manufactured homes; or motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment (excluding leases and rentals), you must source the sale to the location at or from which delivery is made.

When the sale of goods is delivered into Washington from a point outside the state and a local in-state facility, office, outlet, agent or other representative (even though not formally characterized as a "salesperson") of the seller participates in the transaction in some way, such as by taking the order, then the location of the local facility, etc., will determine the place of sale for purposes of the local sales tax. However, if the seller, the seller's agent or the seller's representative maintains no local in-state facility, office, outlet or residence from which business in some manner is conducted, the local tax must be determined by the location of the customer.

Example: Special Sourcing Rule.

(1) Ben, a Federal Way purchaser, buys 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. Ben asks to have the car delivered to the Federal Way location. The dealer must source the sale of the car to the dealer's location in Fife from which the car was delivered.

(c) Leases of tangible personal property. "Lease" and "rental" mean any transfer of possession or control of tangible personal property for a fixed or indeterminate term for

consideration. For more information concerning "leases" and "rentals" see RCW 82.04.040. The terms "lease" and "rental" are used interchangeably throughout this subsection (2)(c). This subsection (2)(c) provides local retail sales tax sourcing guidance for lessors who lease tangible personal property.

(i) How do I source lease payments attributable to the lease of transportation equipment? If you are leasing transportation equipment, you must source the lease payments attributable to that transportation equipment under sourcing Rules 1 through 5 above. See subsection (1)(b)(viii) of this section for a description of transportation equipment.

(ii) How should I source lease payments attributable to the lease of motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment? If you are leasing a motor vehicle, trailer, semi-trailer, or aircraft that does not qualify as transportation equipment, you must source the lease payments under this subsection (2)(c)(ii).

(A) Leases that require recurring periodic payments. If the lease requires recurring periodic payments, you must source each periodic payment to the primary property location of the leased property. See subsection (1)(b)(vii) of this section for a description of primary property location. The primary property location will not change by intermittent use of the leased property in different jurisdictions, e.g., use of leased business property on business trips or service calls to multiple local jurisdictions.

(B) Leases that do not require recurring periodic payments. If the lease does not require recurring periodic payments, you must source the single lease payment under sourcing Rules 1 through 5 above.

(C) Examples:

(1) Rich, a Fall City customer, leases a car from a dealer in Duvall. Rich leases the car for a period of one year. The car does not qualify as transportation equipment. Rich provides the dealer with his residential address in Fall City where he keeps the car. Rich makes monthly periodic payments throughout the term of the lease. Rich indicates the primary property location for the car is his residence in Fall City. The Fall City location is recorded in the store's business records. The periodic lease payments will be sourced to the residential primary property location in Fall City. If Rich were to move to Seattle during the term of the lease and notify the dealer of a change in the car's primary property location, the dealer would source any lease payments subsequent to that change in primary property location to Seattle.

(2) Amanda, a Tacoma business owner, rents a trailer for a period of one week and no periodic payments are required under the lease. The trailer does not qualify as transportation equipment. Amanda receives the trailer at a business location

in Tacoma. The seller will source the sale to the Tacoma business location.

(iii) How do I source lease payments for all other tangible personal property? If you lease tangible personal property not described in subsection (2)(c)(i) or (ii) of this section, you must source your lease payments under this subsection (2)(c)(iii).

(A) Lease that requires recurring periodic payments. If the lease requires recurring periodic payments, you must source the first periodic payment on that lease under sourcing Rules 1 through 5. You must then source all subsequent periodic payments to the primary property location for each period covered by such periodic payments. See subsection (1)(b)(vii) of this section for a description of primary property location. The primary property location will not change 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.

(B) Leases that do not require recurring periodic payments. If the lease does not require recurring periodic payments, you must source the single payment under sourcing Rules 1 through 5.

(C) Examples:

(1) Mark, a Gig Harbor resident, leases furniture from a store in Bremerton. The furniture will be leased for twelve months. The store delivers the furniture to Mark's home address in Gig Harbor. Mark indicates the primary property location for the equipment is his home address in Gig Harbor. The Gig Harbor location is recorded in the store's business records. The customer makes monthly periodic payments for the term of the lease. The first periodic payment must be sourced to Gig Harbor where Mark receives the furniture. The store must then source all subsequent periodic payments to Gig Harbor, which represents the primary property location recorded in the store's ordinary business records.

(2) Brad, a Pasco business owner, leases furniture from a store in Spokane. Brad picks up the furniture in Spokane and makes the initial periodic payment on the lease. The furniture is leased for a period of twelve months. Brad indicates the primary property location for the equipment is a business address in Pasco. The Pasco location is recorded in the store's business records. Brad then makes monthly periodic payments for the term of the lease. The first periodic payment must be sourced to Spokane where Brad received the furniture. The store must source the subsequent periodic payments to the Pasco primary property location.

(3) Alison, a Seattle business owner, leases equipment from a store in Issaquah. Alison picks up the equipment in Issaquah and makes an initial periodic payment on the lease. The equipment is used in work primarily performed in Washington, but

the equipment is also taken out intermittently on a number of service calls made in Oregon. Alison indicates the primary property location for the equipment is a business address in Seattle. The Seattle location is recorded in the store's business records. The equipment is leased for a period of one year. Alison makes monthly periodic payments for the term of the lease. The first periodic payment must be sourced to Issaquah where the equipment is received. The store must source the subsequent periodic payments to Seattle, which represents the primary property location. Alison's intermittent use of the equipment in other jurisdictions does not change the primary property location of the equipment.

(4) Amelia, a Pasco business owner, leases equipment from a store located in Pasco. Amelia picks up the equipment in Pasco, making an initial periodic payment on the lease. The lease is for a period of one year. During the first six months of the lease, Amelia indicates the primary property location for the equipment is a business address in Walla Walla. For the second six months of the lease, Amelia indicates the primary property location is a business address in Leavenworth. The store records the primary property locations in its business records. The store must source the initial periodic payment to Pasco where Amelia received the equipment. The store must source all other periodic lease payments covering the first six months of the lease to the primary property location recorded for Walla Walla. The store must source those periodic lease payments covering the last six months of the lease to the primary property location in Leavenworth.

(5) Brian, a North Bend business owner, rents a backhoe from Construction Rentals located in Lynnwood. The lease period is 45 days and the lease requires a single lease payment. Brian pays the entire lease amount at the time of pickup. The customer picks up the equipment in Lynnwood and takes it to a job site in DuPont. Construction Rentals must source the sale to the location in Lynnwood where Brian receives the backhoe.

(6) Lisa, an Olympia business owner, rents a pressure washer from Rental Co. located in Lacey. The rental period is one day and no periodic payments are required under the lease. Lisa 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. If Rental Co. delivered the pressure washer directly to Lisa at the job site in Yelm, the sale would have been sourced to the location of the job site in Yelm.

(3) **Telecommunications services.**

Where can I find information related to the sourcing and sale of telecommunication services? Sales of telecommunication services and ancillary services are defined as retail sales in RCW 82.04.050. Sellers must source these services under the sourcing provisions located in RCW 82.32.520. See RCW 82.04.065

for more information about telecommunication services and ancillary services.

(4) Use tax. How is use tax sourced in Washington? Where a seller does not have an obligation to collect Washington sales tax, the tangible personal property or service sold by that person is subject to use tax under chapter 82.12 RCW et seq. This use tax is sourced to the place of first use and is payable by the purchaser. The seller may be required to collect use tax pursuant to the requirements of RCW 82.12.040.

[Statutory Authority: RCW 82.32.300. 83-07-032 (Order ET 83-15), § 458-20-145, filed 3/15/83; Order ET 75-1, § 458-20-145, filed 5/2/75; Order ET 70-3, § 458-20-145 (Rule 145), filed 5/29/70, effective 7/1/70.]