

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 WSR 98-20-085, filed 10/6/98, effective 11/6/98)

WAC 458-20-255 Carbonated beverage ((and)) syrup tax. (1)

Introduction. ((In 1991, the legislature amended chapter 82.64 RCW to impose a tax on the volume of carbonated beverages and syrups sold at wholesale and retail in this state with specific credits and exemptions provided. This tax is an excise tax on sales of carbonated beverages or syrups in this state. It is imposed in addition to all other taxes of an excise or property tax nature and is not in lieu of any other such taxes.

The tax on sales of carbonated beverages was repealed effective July 1, 1995, by Referendum 43. (Chapter 7, Laws of 1994 sp.s.) The tax on sales of syrup still applies.

(2) **Definitions.** For purposes of this section the following terms will apply.

(a) "Tax" means the carbonated beverage or syrup tax imposed by chapter 82.64 RCW.

(b) "Carbonated beverage" has its ordinary meaning and includes any nonalcoholic liquid intended for human consumption which contains carbon dioxide.

(i) Thus, "carbonated beverage" includes but is not limited to soft drinks, "soda pop," mineral waters, seltzers, fruit juices, or any other nonalcoholic beverages, including carbonated waters, which are produced for human consumption and which contain any amount of carbon dioxide.

(ii) However, "carbonated beverage" does not include bromides or other carbonated liquids commonly sold as pharmaceuticals.

(c) "Previously taxed carbonated beverage or syrup" means a carbonated beverage or syrup in respect to which a tax has been paid under chapter 82.64 RCW. A "previously taxed carbonated beverage" includes carbonated beverages in respect to which the tax has been paid on either the carbonated beverage or on the syrup in the carbonated beverage. For example, a retailer who produces a carbonated beverage by adding water and carbonation to a syrup, on which the tax has been paid to and collected by a wholesaler, incurs no additional tax liability because the tax has been paid upon the syrup and collected by the wholesaler.

(d) "Syrup" means a concentrated liquid which is added to carbonated water to produce a carbonated beverage. Thus, "syrup" includes the concentrated liquid marketed by

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~~manufacturers to which the purchaser adds water and/or carbon dioxide, or, carbonated water to produce a carbonated beverage.~~

~~(c) "State" means for the credit provisions of this section:~~

~~(i) A state of the United States other than Washington, or any political subdivision of such other state,~~

~~(ii) The District of Columbia, and~~

~~(iii) Any foreign country or political subdivision thereof.~~

~~(f) Except as otherwise expressly defined in this section, the definitions of terms provided in chapters 82.04, 82.08, and 82.12 RCW apply equally for this section. Other terms not expressly defined in these chapters or this section are to be given their common and ordinary meanings.~~

~~(3) **Tax imposition and measure.** The tax is imposed on the wholesale or retail sale of carbonated beverages or syrups within this state. However, the tax on sales of carbonated beverages does not apply to such sales after June 30, 1995. (Chapter 7, Laws of 1994 sp.s.)~~

~~(a) The tax shall be paid by the buyer to the wholesaler and each wholesaler shall collect the tax from the buyer unless the wholesaler is prohibited from collecting the tax from the buyer under the Constitution of this state or the Constitution or laws of the United States in which case the wholesaler is liable for the amount of the tax. The amount of the tax required to be collected by the wholesaler is a debt from the buyer to the wholesaler until the tax is paid by the buyer to the wholesaler. A wholesaler who fails or refuses to collect the tax with intent to violate the provisions of chapter 82.64 RCW or to gain some advantage directly or indirectly, is guilty of a misdemeanor. When a retailer sells carbonated beverages or uses syrup which the retailer has purchased from a wholesaler who has not collected the tax, the retailer must report and pay the tax.~~

~~(i) When a bottler produces a carbonated beverage end product, the measure of the tax shall be the volume of the carbonated beverage end product sold at wholesale or retail.~~

~~(ii) Manufacturers of syrup are taxable on the sales of syrup only when such syrup is removed from the production process and sold without further processing by them or another manufacturer or bottler.~~

~~(iii) Examples. An ingredient used in the manufacturing process by a bottler of carbonated beverages is never taxed even if the ingredient is a syrup. Therefore, a manufacturer of syrup who sells an ingredient to another manufacturer of syrup or a bottler is not taxed on the ingredient sold even if the ingredient is a syrup. The product sold is not a taxable syrup~~

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~~but an ingredient in the manufacturing process. The purchasing manufacturer or bottler is taxed upon the end product produced by such manufacturer or bottler, or by a contract bottler hired by the manufacturer or bottler. Similarly, a manufacturer of syrup or bottler who receives a product from an out of state source for use as an ingredient in the manufacturing or bottling process is taxed when the end product produced is sold.~~

~~(b) The tax for carbonated beverages is imposed on each ounce of product sold. The tax for syrup is imposed on each gallon of product sold. Fractional amounts shall be taxed proportionally.~~

~~(4) **Exemptions.** The following are exempt from the tax:~~

~~(a) Any successive sale of a previously taxed carbonated beverage or syrup.~~

~~(i) In order to verify the payment of the tax, all persons selling or otherwise transferring possession of taxed beverages or syrup, except retailers, shall separately itemize the amount of the tax on the invoice, bill of lading, or other instrument of sale. Beer and wine wholesalers selling carbonated beverages or syrup upon which the tax has been paid and who are prohibited under RCW 66.28.010 from having a direct or indirect financial interest in any retail business may, in lieu of a separate itemization of the amount of the tax, provide a statement on the instrument of sale that the carbonated beverage and syrup tax has been paid. For purposes of the payment and the itemization of the tax, the tax computed on standard units of a product, cases, liters, gallons, etc., may be stated in an amount rounded to the nearest cent. In competitive bid documents, the tax will be considered to not be included in the bid price unless the bid documents separately itemizes the tax. In either case, the tax must be separately itemized on the instrument of sale except when the separate itemization is prohibited by law.~~

~~(ii) Any person prohibited by federal or state law, ruling or requirement from itemizing the tax on an invoice, bill of lading, or other document of delivery shall retain the documentation necessary for verification of the payment of the tax.~~

~~(iii) A subsequent sale of carbonated beverages or syrups sold or delivered upon an invoice, bill of lading, or other document of sale which contains a separate itemization of the tax shall be exempt from the tax.~~

~~(iv) However, a subsequent sale of carbonated beverages or syrups sold or delivered to the subsequent seller upon an invoice, bill of lading or other document of sale which does not contain a separate itemization of the tax is conclusively~~

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~~presumed to be previously untaxed carbonated beverage or syrup and the wholesaler must report and pay the tax. The retailer must report and pay the tax when the retailer purchases from a wholesaler who has not collected the tax.~~

~~(v) This exemption for taxes previously paid is available for any person selling previously taxed carbonated beverage or syrup even though the previous payment may have been satisfied by the use of credits or offsets available to the prior seller.~~

~~(vi) Example. Company A sells to Company B a carbonated beverage or syrup upon which it has paid a similar carbonated beverage or syrup tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid. It provides Company B with an invoice containing a separate itemization of the tax. Company B's subsequent sale is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.~~

~~(b) Any carbonated beverage or syrup that is transferred to a point outside the state for use outside the state.~~

~~(i) The exemption for the sale of exported carbonated beverages or syrups may be taken by any seller within the chain of distribution of such products in this state. To perfect its entitlement to this exemption the seller of such carbonated beverage or syrup must take from its buyer or transferee of the carbonated beverage or syrup a written certification in substantially the following form:~~

~~Certificate of Tax Exempt Export Carbonated Beverages or Syrup~~

~~I hereby certify that the carbonated beverages or syrups specified herein, purchased by the undersigned, from (seller), are for export for use or sale outside Washington state. I will become liable for and pay any carbonated beverage or syrup tax due on all or any part of such products which is not so exported outside Washington state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.~~

~~Registration No. _____ Type of Business _____

(If applicable)
Firm Name _____
Registered Name _____
(If different)
Authorized Signature _____~~

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Title _____

Identity of Carbonated Beverages or
Syrups

(Kind and amount
by volume)

Date _____

~~This certificate may be used so long as some portion of the product is exported. Sellers are under no obligation to verify the amount of the product to be exported by their buyers providing such certificates. Buyers providing such certificates are, however, subject to penalties and interest, for any late payment of tax due on products not exported.~~

~~(ii) Each successive sale of such carbonated beverages or syrups must, in turn, take a certification in substantially this form from any other person to whom such carbonated beverages or syrups are sold. Failure to take and keep such certifications as part of its permanent records will incur carbonated beverage or syrup tax liability by such sellers if the tax has not been previously paid.~~

~~(iii) Persons who themselves export or cause the exportation of such products to persons outside this state for further sale or use outside this state must keep the proofs of actual exportation required by WAC 458-20-193 (Inbound and outbound sales of tangible personal property).~~

~~(c) Persons or activities which the state is prohibited from taxing under the United States Constitution.~~

~~(d) Any sale at wholesale of a trademarked carbonated beverage or syrup by any person to a person commonly known as a bottler who is appointed by the owner of the trademark to manufacture, distribute, and sell such trademarked carbonated beverage within a specific geographic territory.~~

~~(5) **Credit.** Credit shall be allowed against the taxes imposed by chapter 82.64 RCW for any carbonated beverage or syrup tax paid to another state with respect to the same carbonated beverage or syrup. The amount of the credit shall not exceed the tax liability arising under chapter 82.64 RCW with respect to that carbonated beverage or syrup.~~

~~(a) "Carbonated beverage or syrup tax" means a tax:~~

~~(i) That is imposed on the sale at wholesale of carbonated beverages or syrup and is not generally imposed on other activities or privileges; and~~

~~(ii) That is measured by volume of the carbonated beverage or syrup.~~

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~~(b) The amount of credit is limited to the amount of tax paid in this state upon the wholesale sale of the same carbonated beverage or syrup in this state. Also, the credit may not be applied against any tax paid or owed in this state other than the carbonated beverage or syrup tax imposed by chapter 82.64 RCW.~~

~~(6) **How and when to pay tax.**~~

~~The tax must be reported on a special line of the combined excise tax return designated "syrup" ("carbonated beverage or syrup" on returns covering periods prior to the repeal of the tax on sales of carbonated beverages). The volume reported shall be the net volume subject to tax, i.e., the gross volume sold less volume exempt.~~

~~(a) The tax is due for payment together with the timely filing of the return upon which it is reported, covering the tax reporting period during which the carbonated beverage or syrup is sold.~~

~~(i) A wholesaler making a wholesale sale of carbonated beverage or syrup in this state must collect the tax from the buyer and report and pay it to the department. The buyer is not obligated to report or pay the tax.~~

~~(ii) A retailer making a retail sale in this state of carbonated beverage or syrup purchased from a wholesaler who has not collected the tax must collect the tax from the buyer and report and pay it to the department. The buyer is not obligated to report or pay the tax.~~

~~(b) Various circumstances may arise whereby a person will sell carbonated beverages or syrups in this state, some of which have been previously taxed in this or other states and some of which may not. In such cases formulary tax reporting may be used, only after receipt of a special ruling issued by the department of revenue authorizing such formulary reporting.~~

~~(7) **How and when to claim credit.** Any tax credit available to the taxpayer should be claimed and offset against tax liability reported on the same excise tax return when possible. The tax return form provides a line for reporting tax on carbonated beverages and syrups and the credit shall be taken on the line for taking "other credits" as an offset against the tax reported. A statement showing the computation of the credit must be provided. It is not required that any other documents or other evidences of entitlement to credits be submitted with the report. Such proofs must be retained in permanent records for the purpose of verification of credits taken.~~

~~(8) **Administrative provisions.** The provisions of chapters 82.32 and 82.04 RCW regarding due dates, reporting periods, tax return requirements, interest and penalties, tax audits and~~

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limitations, disputes and appeals, and all such general administrative provisions apply equally to the carbonated beverage or syrup tax.) This rule explains the carbonated beverage syrup tax (syrup tax) as imposed by chapter 82.64 RCW. The syrup tax is an excise tax on the number of gallons of carbonated beverage syrup sold in this state, for use in producing carbonated beverages that are sold at wholesale or retail in this state. The syrup tax is in addition to all other taxes.

Except as otherwise provided in this rule, the provisions of chapters 82.04, 82.08, 82.12 and 82.32 RCW regarding definitions, due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all general administrative provisions apply to the syrup tax.

This rule provides examples that identify a number of facts and then state a conclusion regarding the applicability of the syrup tax. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **What is carbonated beverage syrup?** Carbonated beverage syrup (syrup) is a concentrated liquid that is added to carbonated water to produce a carbonated beverage. "Syrup" includes concentrated liquid marketed by manufacturers to which purchasers add water, carbon dioxide, or carbonated water to produce a carbonated beverage. "Carbonated beverage" includes any nonalcoholic liquid intended for human consumption that contains any amount of carbon dioxide, such as soft drinks, mineral or carbonated waters, seltzers, fruit juices, or frozen carbonated beverages known as FCBs. "Carbonated beverage" does not include products such as bromides or carbonated liquids commonly sold as pharmaceuticals.

(3) **When is syrup tax imposed and how is it determined?** Syrup tax is imposed on the wholesale or retail sales of syrup within this state. The syrup tax is determined by the number of gallons of syrup sold. Fractional amounts are taxed proportionally.

(a) **When should syrup tax be reported and paid?** The frequency of reporting and paying the syrup tax coincides with the reporting periods of taxpayers for their business and occupation (B&O) tax. For example, a wholesaler who reports B&O tax monthly would also report any syrup tax liability on the monthly excise tax return.

(b) **What if I sell both previously taxed and nontaxed syrups?** Persons selling syrups in this state, some of which have been previously taxed in this or other states and some of

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which have not, may contact the department of revenue (department) for authorization to use formulary tax reporting. Prior to reporting in this manner, the person must receive a special ruling from the department that allows formulary reporting. Persons selling previously taxed syrups should refer to subsections (5)(a) and (6) of this rule for information about an exemption or credit that may be applicable to such sales.

(4) Who is responsible for paying the syrup tax? This subsection explains who is responsible for payment of the syrup tax for both wholesale and retail sales of syrup in this state.

(a) Wholesale sales. A wholesaler making a wholesale sale of syrup in this state must collect the tax from the buyer and report and pay the tax to the department. If, however, the wholesaler is prohibited from collecting the tax under the Constitution of this state or the Constitution or laws of the United States, the wholesaler is liable for the tax. A wholesaler who fails or refuses to collect the syrup tax with intent to violate the provisions of chapter 82.64 RCW, or to gain some advantage directly or indirectly is guilty of a misdemeanor. The buyer is responsible for paying the syrup tax to the wholesaler. The syrup tax required to be collected by the wholesaler is a debt from the buyer to the wholesaler, until the tax is paid by the buyer to the wholesaler. Except as provided in subsection (5)(b)(ii) of this rule, the buyer is not obligated to pay or report the syrup tax to the department.

(b) Retail sales. A retailer making a retail sale in this state of syrup purchased from a wholesaler who has not collected the tax must report and pay the tax to the department. Except as provided in subsection (5)(b)(ii) of this rule, the buyer is not obligated to pay or report the syrup tax to the department.

(5) Exemptions: This subsection provides information on exemptions from the syrup tax.

(a) Previously taxed syrup. Any successive sale of previously taxed syrup is exempt. "Previously taxed syrup" is syrup on which tax has been paid under chapter 82.64 RCW.

(i) All persons selling or otherwise transferring possession of taxed syrup, except retailers, must separately itemize the amount of the syrup tax on the invoice, bill of lading, or other instrument of sale. Beer and wine wholesalers selling syrup on which the syrup tax has been paid and who are prohibited under RCW 66.28.010 from having a direct or indirect financial interest in any retail business may, instead of a separate itemization of the amount of the syrup tax, provide a statement on the instrument of sale that the syrup tax has been paid. For purposes of the payment and the itemization of the syrup tax, the tax computed on standard units of a product

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(e.g., cases, liters, gallons) may be stated in an amount rounded to the nearest cent. In competitive bid documents, unless the syrup tax is separately itemized in the bid documents, the syrup tax will not be considered as included in the bid price. In either case, the syrup tax must be separately itemized on the instrument of sale except when the separate itemization is prohibited by law.

(ii) Any person prohibited by federal or state law, ruling, or requirement from itemizing the syrup tax on an invoice, bill of lading, or other document of delivery must retain the documentation necessary for verification of the payment of the syrup tax.

(iii) A subsequent sale of syrup sold or delivered upon an invoice, bill of lading, or other document of sale that contains a separate itemization of the syrup tax is exempt from the tax. However, a subsequent sale of syrup sold or delivered to the subsequent seller upon an invoice, bill of lading, or other document of sale that does not contain a separate itemization of the syrup tax is conclusively presumed to be previously untaxed syrup, and the seller must report and pay the syrup tax unless the sale is otherwise exempt.

(iv) The exemption for syrup tax previously paid is available for any person selling previously taxed syrup even though the previous payment may have been satisfied by the use of credits or offsets available to the prior seller.

(v) Example. Company A sells to Company B a syrup on which Company A paid a similar syrup tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid (see subsection (6) of this rule). It provides Company B with an invoice containing a separate itemization of the syrup tax. Company B's subsequent sale is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) **Syrup transferred out-of-state.** Any syrup that is transferred to a point outside the state for use outside the state is exempt. The exemption for the sale of exported syrup may be taken by any seller within the chain of distribution.

(i) **Required documentation.** The prior approval of the department is not required to claim an exemption from the syrup tax for exported syrup. The seller, at the time of sale, must retain in its records an exemption certificate completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department's "Certificate of Tax Exempt Export Carbonated Beverage Syrup," or another certificate with substantially the same information. A

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blank exemption certificate can be obtained through the following means:

(A) From the department's internet website at <http://dor.wa.gov>;

(B) By facsimile by calling Fast Fax at (360) 705-6705 or (800) 647-7706 (using menu options); or

(C) By writing to: Taxpayer Services, Washington State Department of Revenue, P.O. Box 47478, Olympia, Washington 98504-7478.

(ii) The exemption certificate may be used so long as some portion of the syrup is exported. Sellers are under no obligation to verify the amount of syrup to be exported by their buyers providing such certificates. Buyers providing exemption certificates for exported syrup agree to become liable for tax and any associated penalties and interest on syrup that is not exported.

(iii) Example. Company A sells a previously untaxed syrup to Company C. Company C provides the seller with a completed exemption certificate as explained in subsection (5)(b)(i) of this rule. Company C sells the syrup to Company D, who provides Company C with an exemption certificate. Company D decides to not export a portion of the purchased syrup. Companies A and C can both accept exemption certificates. Company D is responsible for paying syrup tax on the syrup not exported.

(iv) Persons who make sales of syrup to persons outside this state must keep the proofs required by WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) to substantiate the out-of-state sales.

(c) Taxation prohibited under the United States Constitution. Persons or activities that the state is prohibited from taxing under the United States Constitution are exempt.

(d) Wholesale sales of trademarked syrup to bottlers. Any wholesale sale of a trademarked syrup by any person to a person commonly known as a bottler who is appointed by the owner of the trademark to manufacture, distribute, and sell the trademarked carbonated beverage within a specific geographic territory is exempt.

(6) Credit for syrup tax paid to another state. Credit is allowed against the taxes imposed by chapter 82.64 RCW for any syrup tax paid to another state with respect to the same syrup. The amount of the credit cannot exceed the tax liability arising under chapter 82.64 RCW. The amount of credit is limited to the amount of tax paid in this state upon the wholesale sale of the same syrup in this state. In addition, the credit may not be applied against any tax paid or owed in this state other than

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the syrup tax imposed by chapter 82.64 RCW.

(a) **What is a state?** For purposes of the syrup tax credit, "state" is any state of the United States other than Washington, or any political subdivision of another state; the District of Columbia; and any foreign country or political subdivision of a foreign country.

(b) **What is a syrup tax?** For purposes of the syrup tax credit, "syrup tax" means a tax that is:

(i) Imposed on the sale at wholesale of syrup and is not generally imposed on other activities or privileges; and

(ii) Measured by the volume of the syrup.

(c) **How and when to claim the credit.** Any tax credit available to the taxpayer should be claimed and offset against tax liability reported on the same excise tax return when possible. The excise tax return provides a line for reporting syrup tax, and the credit must be taken in the credit section under the credit classification "other credits." A statement showing the computation of the credit must be provided. It is not required that any other documents or other evidence of entitlement to credits be submitted with the return. Such proofs must be retained in permanent records for the purpose of verification of credits taken.