

This rule was adopted on December 24, 2009 and becomes effective January 24, 2010. It may be used to determine tax liability on and after the effective date, until the codified version is available from the code reviser's office.

AMENDATORY SECTION (Amending WSR 01-08-003, filed 3/21/01, effective 4/21/01)

WAC 458-20-247 Trade-ins, selling price, sellers' tax measures. (1) **Introduction.** This section explains the measure of tax when a trade-in is included in the sale of tangible personal property. It explains how and when the retail sales or use tax exclusions apply and the recordkeeping requirements needed to document the transactions.

~~The value of "trade-in property of like kind" is excluded from the definitions of "selling price" in RCW 82.08.010 and the definition of "value of the article used" in RCW 82.12.010. ((This rule explains how and when the retail sales or use tax exclusions apply and the recordkeeping requirements needed to document the transactions. The retail sales and use tax exemptions provided for core deposits and credits by RCW 82.08.036 and 82.12.038 are discussed in WAC 458-20-250.))~~

Unless otherwise stated, "tax," "taxable," and "nontaxable," as used in this ((rule)) section, refer to retail sales or use tax only. The terms "trade-in," "traded in," and "property traded in" have their ordinary and common meaning. The terms refer to property applied, in whole or in part, toward the selling price of property of like kind. Readers are advised that the fact that sales and purchase transactions might be characterized as a "like kind" under Section 1031 of the Internal Revenue Code does not control for the purpose of the trade-in exclusion in RCW 82.08.010 and 82.12.010.

(a) **Examples.** This section contains examples which identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(b) **References to related sections.** The department of revenue (department) has adopted other sections that readers may want to refer to.

(i) WAC 458-20-106 Casual or isolated sales--Business reorganizations;

(ii) WAC 458-20-178 Use tax;

(iii) WAC 458-20-208 Exemptions for wholesale sales of new motor vehicles between new car dealers and for accommodation sales;

(iv) WAC 458-20-211 Leases or rentals of tangible personal

property, bailments; and

(v) WAC 458-20-272 Tire fee--Core deposits or credits.

(2) **General nature of the trade-in exclusion.** RCW 82.08.010 and 82.12.010 define the terms "selling price" and "value of the article used," in pertinent part, to mean the total amount of consideration, ((whether money)) except separately stated trade-in property of like kind, including cash, credit((s)), ((rights,)) or ((other)) tangible personal property ((except trade-in property of like kind)), expressed in terms of money paid or delivered by a buyer to a seller. As a result, the buyer of tangible personal property is entitled to reduce the measure of retail sales or use tax if ((a)):

The buyer delivers the trade-in property to the seller((b)):

The trade-in property is delivered as consideration for the purchase((c)): and ((e))

The property traded in is "property of a like kind."

(a) The trade-in exclusion applies to all trade-in property of like kind delivered by a buyer to a seller as consideration for a purchase. Thus, if a buyer trades in two motor vehicles when purchasing one motor vehicle, the buyer is entitled to a reduction in the measure of retail sales tax based on the value of both trade-in vehicles.

(b) The trade-in exclusion is limited to retail sales and use taxes. There is no comparable exclusion for business and occupation (B&O) tax. (See definition of "gross proceeds of sales" in RCW 82.04.070 and of "value proceeding or accruing" in RCW 82.04.090.) Sales tax need not have been paid on the item being traded in to be eligible for the trade-in exclusion.

(3) **Buyer to deliver trade-in property to seller.** The buyer must deliver trade-in property to the "seller."

(a) RCW 82.08.010 defines "seller" as "every person . . . making sales at retail or retail sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal." There is no requirement that the seller be the owner of the property being sold to the buyer. RCW 82.08.010 anticipates and includes situations where a "seller" is selling property that he or she does not actually own, such as in consignment sales transactions.

For example, Broker enters into a consignment sale contract with Susan Smith to sell her Boat A. John Doe contacts Broker expressing interest in purchasing Boat A, provided his Boat B is accepted as a trade-in on the purchase. John Doe executes a purchase agreement with Broker which specifically identifies both Boat A being purchased and the trade-in. Broker accepts delivery and ownership of Boat B and places Boat B into Broker's own inventory. In turn Broker arranges delivery of the craft purchased to John. The buyer (John) has delivered the trade-in property (Boat B) to the seller (Broker). There is no

requirement that Broker purchase Boat A from Susan (thereby becoming the owner) prior to selling Boat A to John and accepting Boat B as trade-in property because, as a broker, Broker is a seller under RCW 82.08.010.

(b) The trade-in exclusion does not apply to transactions where a seller transfers tangible personal property in or out of its own inventory in exchange for other property it also owns.

(4) **Trade-in as consideration.** Property traded in must be consideration delivered by the buyer to the seller. The sales documents must identify the tangible personal property being purchased and the trade-in property being delivered to the seller. This does not require simultaneous transfers of the property being traded in and the property being purchased, but it does require that the delivery of the trade-in and the purchase be components of a single transaction. Sales documents, executed not later than the date the trade-in property is delivered to the seller, must identify the property purchased and the trade-in property as more fully explained in subsection ((7) below).

~~The following examples identify a number of facts and then state conclusions with respect to the trade in exclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances))~~ (8) of this section.

Examples:

(a) Jane Doe offers to purchase Sailboat A from Dealer, if Dealer accepts her Sailboat B as a trade-in on the purchase. Dealer declines to accept ownership of Jane's Sailboat B, but instead offers to sell Sailboat B on a consignment basis with the net proceeds to be applied toward the purchase if Sailboat B is sold within three months. Jane accepts and Sailboat B is sold within the three-month period, and the net proceeds are applied to Jane's purchase of Sailboat A.

Jane is not entitled to the trade-in exclusion. An agreement to sell property on consignment does not constitute consideration "paid or delivered by a buyer to a seller," even if the subsequent proceeds are applied to the purchase price.

(b) Sally Jones decides to upgrade from her existing motor home to a new, larger motor home. The salesperson at a local RV dealership explains that while the dealership does not currently have on hand a motor home meeting Sally's needs, it can order one for her from the manufacturer. The salesperson also explains that if Sally trades in her motor home at the time she enters into the purchase contract, the dealership will accept the motor home as a down payment toward the purchase of the new motor home. Sally signs the purchase contract, the dealership orders the new motor home, and Sally delivers her motor home to the RV ~~((dealers))~~ dealership (who accepts ownership ~~((thereof))~~ of the motor home). Sally's new motor home is delivered to her

eight months later.

Sally is entitled to the trade-in exclusion because the motor home was delivered to the RV dealership as consideration paid toward her purchase of the new motor home.

(c) Mr. B and Coastal Brokers enter into a consignment sales agreement. Under the terms of this agreement, Coastal Brokers will sell Mr. B's sailboat on a consignment basis and at the time of sale place the proceeds due Mr. B into a trust account for use toward a possible purchase of a yacht by Mr. B. Mr. B's sailboat is sold and the proceeds due to Mr. B placed in the trust account. Mr. B subsequently purchases a yacht from Coastal Brokers, and the trust account proceeds are applied to the purchase price of the yacht.

Mr. B is not entitled to the trade-in exclusion. The delivery of Mr. B's sailboat to Coastal Brokers and Mr. B's purchase of the yacht are not components of a single transaction. In addition, Mr. B's delivery of his sailboat for consignment sale by Coastal Brokers does not constitute consideration "paid or delivered by a buyer to a seller," even if proceeds from the sale are applied to the purchase of the yacht.

(d) John Smith agrees to purchase Travel Trailer A from Dealer if Dealer accepts John's Travel Trailer B as a trade-in on the purchase. Dealer accepts ownership of Travel Trailer B at an agreed-upon value, on the condition that John pay Dealer a monthly fee to reimburse Dealer for financing costs associated with Travel Trailer B. This fee is to be paid for a period of four months or until Dealer sells Travel Trailer B, whichever is shorter. John has no further responsibility with respect to Travel Trailer B after this period.

John is entitled to the trade-in exclusion because he delivered Travel Trailer B to Dealer as consideration paid toward Travel Trailer A. The fees John paid to reimburse Dealer for financing costs associated with the trade-in property do not change the nature of the transaction, though for the purposes of the trade-in exclusion they do reduce the originally agreed-upon value of the trade-in property.

(5) **Property of like kind.** The term "property of like kind" means articles of tangible personal property of the same generic classification. It refers to the class and kind of property, not to its grade or quality. The term includes all property within a general classification rather than within a specific category in the classification. Thus, as examples, it means furniture for furniture, motor vehicles for motor vehicles, licensed recreational land vehicles for licensed recreational land vehicles, appliances for appliances, auto parts for auto parts, and audio/video equipment for audio/video equipment. These general classifications are determined by the nature of the property and its function or use. It may be that

some kinds of property fit within more than one general classification. For example, a motor home is both a motor vehicle and a licensed recreational land vehicle. Thus, for purposes of the trade-in exclusion, a motor home may be taken as a trade-in on a travel trailer, truck, camper, or a truck with camper attached, and vice versa. Similarly, a travel trailer may be taken as trade-in on a motor home even though a travel trailer is not a motor vehicle; both are licensed recreational land vehicles. Conversely, a utility trailer may not be taken as trade-in on a travel trailer because a utility trailer is neither a motor vehicle nor a licensed recreational land vehicle. Likewise a car may not be taken as trade-in on a camper and vice versa.

It is not required that a car be traded in exclusively on another car in order to get the trade-in reduction of the tax measure. It could, as well, be traded in as part payment for a truck, motorcycle, motor home, or any other qualifying motor vehicle. Similarly, a sofa for a recliner chair, a pistol for a rifle, a sailboat for a motorboat, or a gold chain for a wrist watch are the kinds of generic trade-in transfers which would qualify. The exclusion of the value of property traded in, however, does not include such things as a motorcycle for a boat, a diamond ring for a television set, a battery for lumber, computer hardware for computer software, or farm machinery (including tractors and self-propelled combines) for a car.

(6) **Value of property traded in.** The seller and buyer establish the value of property traded in. The parties may not overstate the value of the trade-in property in order to artificially lower the amount of retail sales or use tax due. Absent proof of a higher value, the property traded in must be determined by the fair market value of similar property of like quality, quantity, and age, sold or traded under comparable conditions.

(7) **Trade-in value exceeds selling price.** If the trade-in value exceeds the selling price of the item sold, the selling price of the item being purchased should be used as the trade-in value. For example, a Washington resident purchases a car with a value of (~~(\$5,000)~~) \$15,000 and trades in a car with a fair market value of (~~(\$7,000)~~) \$17,000. The net due to the purchaser is \$2,000. When the seller completes the excise tax return, he or she should report a trade-in value of (~~(\$5,000)~~) \$15,000 and not (~~(\$7,000)~~) \$17,000 because the trade-in value is capped at selling price of the item being purchased.

(8) **Recordkeeping.** RCW 82.32.070 requires every person liable for any tax to keep and preserve records from which tax liability can be determined. To substantiate a claim for the trade-in exclusion, the sales agreement and/or invoice must identify both the property being purchased and the trade-in property. Such identification includes the model number, serial

number, year of manufacture, and other information as appropriate. The sales agreement and/or invoice must also specify the selling price and the value of the trade-in property.

A copy of the sales agreement or invoice must be retained as a part of the seller's sales records. The following is an example of an invoice providing the necessary information regarding a sales transaction with trade-in:

Sold: ((2000)) 2009 Mountain Home 8.5 ft. Camper Model MH-20DT, Serial No. 200010	\$(9,075) <u>19,075</u>
Less "trade-in" - 1983 Meadowlark 8 ft. Camper Model No. ML883, Serial No. 0001	\$2,000
<u>Subtotal</u>	<u>\$17,075</u>
<u>Retail Sales Tax</u>	
<u>Total</u>	

(9) **Encumbered property traded in.** A buyer is entitled to full value for trade-in property, which is otherwise encumbered by a security interest or the subject of a conditional sale, or retail installment sales contract.

(10) **Casual or isolated sales.** The retail sales tax applies to all casual or isolated retail sales made by any person who is required to be registered and reporting tax to the state. The trade-in exclusion applies in the case of a casual or isolated sale, provided the statutory requirements are satisfied. The recordkeeping requirements explained in subsection ((+7)) (8) of this section apply to casual or isolated sales.

Persons who are not engaged in business activity, e.g., private persons, are not required to be registered and are not required to collect sales tax on their casual or isolated sales. See RCW 82.08.0251 and WAC 458-20-106 ((~~Casual or isolated sales—Business reorganizations~~)). The use of property acquired through casual sales is subject to use tax. See RCW ((~~82.12.0251~~)) 82.12.020 and WAC 458-20-178.

(11) **Trade-ins as sales.** RCW 82.04.040 defines the term "sale" in pertinent part to mean "any transfer of the ownership of, title to, or possession of property for a valuable consideration." When property is traded in, ownership in that property is transferred. As a result, under the law a buyer delivering trade-in property to a seller is making a sale of the trade-in property.

(a) If the buyer is not in the business of selling the type of property being traded in the buyer incurs no B&O tax

liability. ((+))See WAC 458-20-106 ((~~on casual or isolated sales~~)).((+))

(b) On occasions where the buyer is in the business of selling the type of property being traded in, the buyer incurs a B&O tax liability.

For example, Don's Leasing purchases a new car from Tom the Dealer. This car will be part of ((~~Leasing's~~)) Don's inventory of cars that it rents to customers. ((~~Leasing~~)) Don delivers a used car out of its inventory to Tom the Dealer as a part of the consideration paid for the new car. The trade-in of the used car by ((~~Leasing~~)) Don is considered a wholesale sale to ((~~Dealer~~)) Tom. This is not a casual or isolated sale because ((~~Leasing~~)) Don is in the business of selling cars in the form of rentals.

(c) In most cases, a buyer delivers trade-in property to a seller who is in the business of reselling trade-in property (e.g., a buyer trading in an automobile to a new car dealer). The buyer in these cases has no responsibility to collect retail sales tax.

(12) **Retail services.** The exclusion of the value of property traded in from the selling price tax measure applies only to sales involving tangible personal property traded in for tangible personal property sold. It does not apply to any transactions involving services that have been statutorily included as "sales at retail." ((+))See RCW 82.04.050((+)). For example, a construction contractor may not accept part payment in tangible personal property to thereby reduce the sales tax measure of the construction contract selling price. Similarly, a seller of tangible personal property may not accept retail services as part payment to thereby reduce the selling price tax measure. Such transfers neither qualify as trade-in transfers of tangible property nor "in-kind" transfers.

(13) **Trade-in for rental property.** Under RCW 82.04.050, rentals or leases of tangible personal property are "retail sales." The "selling price" is also the measure of tax for such rentals and leases. Where tangible personal property is traded in as part payment for the rental or lease of property of like kind (e.g., a used computer against the rental of a new one), the sales tax will apply to all payments after the value of the property traded in has been depleted or consumed and the lessor of the property actually begins making charges for the lease or rental of tangible personal property. Refer to WAC 458-20-211 ((~~Leases or rentals of tangible personal property, bailments~~)) for more information regarding the tax-reporting responsibilities with respect to lease or rental transactions.

A lessee must first purchase leased property before trading it in toward the purchase/lease of other property to be entitled to the trade-in exclusion. A buyer cannot satisfy the statutory requirement that the trade-in property be delivered to the

seller as a part of the consideration for the purchased property if the buyer does not have ownership of and the right to sell the property being traded in. For example, Jane Doe leases Auto A from Leasing Company. Jane decides to lease a newer Auto B from Leasing Company. Jane exercises her option to purchase Auto A, and then delivers Auto A as a trade-in towards the lease of Auto B. Jane is entitled to the trade-in exclusion. By delivering her ownership of Auto A to Leasing Company, Jane has satisfied the statutory requirement that she as the buyer deliver trade-in property to the seller as a part of the consideration paid for Auto B.

(14) **Real property transfers.** Because the trade-in exclusion is limited to tangible personal property, the trade-in exclusion does not apply to sales of real property or transactions where real property is traded in for tangible personal property.

(15) **Use tax.** RCW 82.12.010 defines the measure of the use tax as the "value of the article used." As explained in subsection (2) of this ~~((rule))~~ section, the statutory definition excludes "trade-in property of ~~((like-kind))~~ like kind." Therefore, the measure of the use tax for tangible personal property upon which no retail sales tax has been paid (e.g., if it were purchased in another state) is the same as the measure of the retail sales tax. In such cases the value of the property traded in should be excluded from the use tax measure.

The consumer-user, or any seller who has a duty to collect this state's use tax, must retain the sales records reflecting property "traded in," as explained in subsection ~~((+7))~~ (8) of this ~~((rule))~~ section.