**This rule draft is being proposed under an expedited rule-making process that does not require the agency to hold public hearings. Under no circumstances is this proposed rule to be used as a basis for determining tax liability or eligibility for a tax deduction, exemption, or credit.**

AMENDATORY SECTION (Amending WSR 05-14-086, filed 6/30/05, effective 7/31/05)

**WAC 458-20-177 Sales of motor vehicles, campers, and trailers to nonresident consumers.** (1) **Introduction.** This ((~~rule~~)) section applies to any sale of a vehicle to a consumer who is not a resident of the state, including nonresident military personnel temporarily stationed in Washington. The ((~~rule~~)) section describes the different business and occupation (B&O) and retail sales tax consequences that result from vehicle sales to nonresidents, particularly the sales tax exemption provided by RCW 82.08.0264. It also describes the documentation a seller must retain to demonstrate that a sale is exempt.

For information on use tax liability associated with vehicles, see WAC 458-20-178, Use tax.

For sales of vehicles to Indians or Indian tribes and required documentation, see WAC 458-20-192, Indians--Indian country.

Questions regarding vehicle licensing or registration requirements should be directed to the department of licensing.

(2) **What is a "vehicle"?** For the purposes of this ((~~rule~~)) section, a "vehicle" is any vehicle of a type that may be lawfully licensed under chapter 46.16 RCW for operation on a public highway in this state, except that the term does not include any machinery and implements for use in conducting a farming activity subject to RCW 82.08.0268. The term "vehicle" includes, but is not limited to, a car, truck, camper, trailer, bus, motorhome, and motorcycles equipped for road use. It does not include farm tractors, bicycles, mopeds, motorized scooters, snowmobiles, or vehicles that are manufactured for exclusively off-road use.

(3) **What are the tax consequences when a vehicle sold to a nonresident is delivered in-state?** A sale of a vehicle to a nonresident where the vehicle is delivered in-state is exempt from retail sales tax if the sale meets the requirements of RCW 82.08.0264. In all other cases where the vehicle is delivered to the buyer in this state, the retail sales tax applies and must be collected at the time of sale, unless otherwise exempt by law. The mere fact that the buyer may be or claims to be a nonresident or that the buyer intends to, and actually does, use the vehicle in some other state does not, by itself, entitle the buyer to the exemption. In any case where the seller licenses or registers the vehicle in Washington on the buyer's behalf, the retail sales tax applies.

In computing the B&O tax liability of persons engaged in the business of selling vehicles, no deduction is allowed for a sale made to a nonresident for use outside this state if the nonresident buyer takes delivery in Washington. This is true even if the buyer is entitled to an exemption from the retail sales tax.

(a) **Exemption requirements.** If a vehicle is delivered within this state to a nonresident buyer, retail sales tax does not apply if the vehicle is purchased for use outside this state and, immediately upon delivery, the vehicle:

(i) Is removed from the state under the authority of a trip permit issued by the department of licensing pursuant to RCW 46.16.160 or any agency of another state that has authority to issue similar permits; or

(ii) Is registered and licensed in the state of the buyer's residence, will not be used in this state more than three months, and will not be legally required to be registered and licensed in this state.

If the vehicle bears Washington state license plates, the seller must remove the Washington plates before delivering the vehicle and retain evidence of that removal to avoid liability for collection and payment of the retail sales tax.

(b) **Seller obligations; documentation.** For sales completed before July 22, 2007, the seller must properly document the following facts:

(i) The buyer is a nonresident of Washington;

(ii) The vehicle is for use outside this state;

(iii) The vehicle is to be removed from the seller's premises under the authority of either:

(A) A trip permit; or

(B) Valid license plates issued for that vehicle by the state of the buyer's residence, with the plates actually affixed to the vehicle upon final delivery; and

(iv) If the vehicle bears Washington state license plates, the seller has removed the Washington plates before delivery.

(c) **Seller obligations effective July 22, 2007.** For sales completed on or after July 22, 2007, the seller must retain the following documents, which must be made available upon request by the department of revenue (department):

(i) A copy of the buyer's currently valid out-of-state driver's license or other official picture identification issued by a jurisdiction other than Washington state;

(ii) A copy of any one of the following documents, on which there is an out-of-state address for the buyer:

. A current residential rental agreement;

. A property tax statement from the current or previous year;

. A utility bill, dated within the previous two months;

. A state income tax return from the previous year;

. A voter registration card;

. A current credit report; or

. Any other document determined by the department to be acceptable;

(iii) A witnessed declaration in the form designated by the department, signed by the buyer, and stating that the buyer's purchase meets the requirements of this section (buyer's affidavit); and

(iv) A seller's certification, in the form designated by the department, that either a vehicle trip permit was issued or the vehicle was immediately registered and licensed in another state as required by RCW 82.08.0264.

To comply with these requirements, the seller must retain a properly completed buyer's affidavit and seller's certificate (in-state delivery) ((~~in substantially the form prescribed in subsection (5) of this rule. The seller must also retain documentation of the buyer's nonresidence, as required in subsection (6) of this rule~~)). If the nonresident buyer is a corporation, the seller must also retain the number of the corporate nonresident permit.

(d) **What are the consequences for noncompliance?**

Any seller that makes sales without collecting the tax to a person who does not provide the documents required under (c) of this subsection, and any seller who fails to retain the documents required under (c) of this subsection for the period prescribed by RCW 82.32.070 is personally liable for the amount of tax due.

Any seller that makes sales without collecting the retail sales tax under RCW 82.08.0264 and who has actual knowledge that the buyer's documentation required by (c) of this subsection is fraudulent is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the buyer and the seller are liable for any penalties and interest assessable under chapter 82.32 RCW.

(4) **What are the tax consequences when a vehicle sold to a nonresident is delivered out-of-state?** A sale of a vehicle to a nonresident where the seller delivers the vehicle out-of-state is exempt from retail sales tax. If the vehicle is delivered to the buyer outside the state, the seller may also deduct the sale amount from the gross proceeds of sales for B&O tax purposes. The deductible amount must be included in the gross income reported on the excise tax return and then deducted on the return to determine the amount of taxable income. The deduction must be identified on the deduction detail page of the return as an "interstate and foreign sales" deduction.

(a) **Requirements.** If a vehicle is delivered outside the

state to a nonresident buyer, retail sales tax does not apply if:

(i) The seller, as required by the contract of sale, delivers possession of the vehicle to the buyer at a point outside Washington; and

(ii) The vehicle is not licensed or registered in this state. If the vehicle bears Washington state license plates, the seller must remove the Washington plates before delivery and retain evidence of that removal to avoid liability for collection and payment of the retail sales tax.

(b) **Seller obligations; documentation.** The seller must properly document the following facts:

(i) The buyer's out-of-state address;

(ii) The vehicle is not licensed or registered in this state or the Washington state license plates have been removed from the vehicle before delivery;

(iii) Under the terms of the sales agreement, the seller is required to deliver the vehicle to the buyer at a point outside this state; and

(iv) The out-of-state delivery was actually made by the seller or by a common carrier acting as the seller's agent.

To comply with these requirements, the seller must retain a properly completed buyer's certificate and seller's certificate (out-of-state delivery) ((~~in substantially the form prescribed in subsection (5) of this rule~~)). The seller's certificate must be signed by the person who actually delivers the vehicle to the buyer at the out-of-state location and may be completed only after delivery occurs.

(c) **Documentation when delivery is made by common carrier.** When a vehicle is delivered outside the state by common carrier acting as the seller's agent, no buyer's certificate or seller's certificate is required. Instead, the seller must retain:

(i) Evidence that the vehicle's license plates (if licensed in Washington) were removed; and

(ii) A signed copy of the bill of lading issued by the carrier. The bill of lading must show the seller as the consignor and indicate that the carrier agrees to transport the vehicle to a point outside the state.

(5) **What forms should be used to document an exempt sale?** The ((~~following~~)) documents: "Buyer's Affidavit," "Seller's Certificate In-State Delivery," "Buyer's Certificate Out-of-State Delivery," and "Seller's Certificate Out-of-State Delivery" are necessary to substantiate exempt sales to nonresidents. Do not send the documents ((~~described in this subsection~~)) to the department ((~~of revenue~~)), but keep them as part of the seller's permanent records for five years. Without this documentation, claims that a transaction was exempt from tax will be disallowed.

Copies of the forms can be obtained:

. From the department's internet web site at http://dor.wa.gov

. By facsimile by calling fast fax at 360-705-6705 or 800-647-7706 (using menu options)

. By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, Washington 98504-7478

(a) **In-state delivery.** A sale with in-state delivery requires a completed buyer's affidavit and seller's certificate-in-state delivery.

((~~The buyer's affidavit must be substantially in the following form:~~

**~~Buyer's Affidavit~~**

**~~To Be Completed by the Buyer When the Vehicle Is Delivered to the Buyer in Washington~~**

~~I, (Name of buyer), swear that:~~
~~I am a resident of the State of . . . . . .. . . . . .. I am not a resident of the state of Washington and do not claim to be a resident of Washington for any purpose. My home address is (Street and number or rural route), (City, town or post office), (State), (Zip Code). On (Date), I purchased from (Name of seller) the following vehicle:~~
~~Make~~ ~~Model~~

~~Year~~ ~~Serial No. (VIN)~~

~~I am purchasing this vehicle for use outside Washington state. The vehicle will be removed from Washington state by the following means:~~ **~~(Select and complete one)~~**

~~A. The vehicle will be driven from the seller's premises under the authority of a trip permit numbered . . . . which has been issued to me by the Washington state department of licensing.~~

~~B. The vehicle will not be used in the state of Washington for more than three months and has been licensed in the state of . . . . . .. That state has issued to me license plates numbered . . . . . .. Those license plates are valid until (Expiration date of license). The plates have been affixed to the vehicle before it has left the seller's premises.~~

~~I, the undersigned buyer, understand that by completing and signing this affidavit I am swearing that I qualify for the tax-exempt purchase of the vehicle described above. In addition, I understand that false or erroneous use of this affidavit will result in liability for unpaid tax with interest and may result in additional penalties.~~

~~Dated at . . . . . .~~

~~. . . . . .~~

~~(Buyer's signature)~~

~~. . . . . .~~

~~Service No. if member of armed services~~
~~Subscribed and sworn to before me at . . . . . ., Washington, this . . . . . day of . . . . ., 20 . . .~~

~~My appointment expires: . . .~~

~~The seller's certificate must be substantially in the following form and be attached to the buyer's affidavit:~~

~~**Seller's Certificate**~~
~~**In-State Delivery**~~

~~I certify that before final delivery of the vehicle described in the buyer's affidavit: (a) I examined trip permit No. . . . .which authorizes the vehicle's transit; or (b) license plates numbered . . . . . ., issued for the vehicle by the state of . . . . . and expiring . . . . . ., were affixed to the vehicle. I further certify that I have examined and retained a copy of the following item(s) of documentary evidence showing the buyer's residency in the state of . . . . . .:~~

~~SELECT AT LEAST ONE~~

~~. . . . . .Driver's license #~~

~~. . . . . .Other picture identification #~~

~~. . . . . .Other (specify) #~~

~~(If the vehicle sold was previously licensed with Washington plates) I further certify that the Washington state license plates were removed by . . . . . ., agent of the seller.~~

~~. . . . . .~~

~~(Signature of seller or representative)~~

~~. . . . . .~~

~~(Title officer or agent)~~))

(b) **Delivery out-of-state by seller.** A sale with out-of-state delivery by a seller requires a completed buyer's certificate and seller's certificate-out-of-state.

((~~The buyer's certificate must be substantially in the following form:~~

**~~Buyer's Certificate~~**
**~~Out-of-State Delivery~~**

**~~To Be Completed by Buyer at Time of Delivery Outside Washington State~~**

~~(Name of buyer)~~
~~(Street and number or rural route)~~
~~(City, town or post office)~~
~~(State), (Zip Code)~~
~~On . . . . . ., I purchased from (Name of seller) the following vehicle:~~

~~Make~~ ~~Model~~

~~Year~~ ~~Serial No. (VIN)~~

~~Under the terms of the sales agreement the seller was required to, and did on this day, deliver this vehicle to me at (Place of delivery) in (State).~~

~~Dated at . . . . . ., this . . . . day of . . . . . ., 20 . . .~~

~~(Signature)~~

~~. . . . . .~~

~~Service No. if Member of Armed Services~~

**~~THE FOLLOWING STATEMENTS MUST BE INITIALED BY THE BUYER:~~**

~~. . . . . I certify under penalty of perjury under the laws of the State of Washington that all of the information on this certificate is true. I further understand that I may be subject to criminal prosecution or other legal penalties for providing false information on this certificate.~~
~~. . . . . I have completed and signed this certificate ***after*** the vehicle was delivered to me at the place and time described above.~~

~~The seller's certificate must be substantially in the following form and be attached to the buyer's certificate:~~

**~~Seller's Certificate~~**
**~~Out-of-State Delivery~~**

**~~To Be Completed at Time of Delivery by the Person Who Delivers the Vehicle to the Buyer~~**

~~I certify that today I delivered the vehicle described in the buyer's certificate to (Name of buyer), at (Place of delivery).~~
~~(If the vehicle sold was previously licensed with Washington plates) I further certify that the Washington state license plates were removed by . . . . . ., agent of the seller.~~

~~Dated . . .~~

~~. . . . . .~~

~~(Signature of the person who delivered the vehicle to the buyer)~~

~~. . . . . .~~

~~(Title Officer or Agent)~~

~~**The Following Statements Must Be Initialed by the Person Who Delivered the Vehicle to the Buyer:**~~

~~. . . . . I certify under penalty of perjury under the laws of the State of Washington that all of the information on this certificate is true. I further understand that I may be subject to criminal prosecution or other legal penalties for providing false information on this certificate.~~
~~. . . . . I have completed and signed this certificate ***after*** the vehicle was delivered to the buyer as described above.~~))

(6) **What are a seller's obligations to verify a buyer's statements on nonresidency?**

(a) Prior to July 22, 2007, completion of a buyer's affidavit documents the exempt nature of a sale under RCW 82.08.0264 unless there are facts that negate the presumption that the seller relied on the buyer's affidavit in good faith. The seller, however, must exercise a reasonable degree of care in accepting statements regarding a buyer's nonresidence. If delivery occurs in-state, the seller must examine and retain a copy of at least one form of documentary evidence showing the buyer's out-of-state residence. Lack of good faith on the part of the seller or lack of the exercise of the degree of care required is indicated, for example, in the following circumstances:

((~~(a)~~)) (i) If the seller knows that the buyer is living in Washington;

((~~(b)~~)) (ii) If the buyer gives a Washington address for the purpose of financing the purchase of the vehicle;

((~~(c)~~)) (iii) If, at the time of sale, arrangements are made for future servicing of the vehicle in the seller's shop

and a Washington address or telephone number is shown for the shop customer; or

((~~(d)~~)) (iv) If the seller has ready access to any other information that discloses that the buyer may be a resident of Washington.

(b) **When can the department contact a buyer?** For sales completed on or after July 22, 2007, if the department has information indicating the buyer is a Washington resident, or if the addresses for the buyer shown on the documentation provided under subsection (3)(c) of this section are not the same, the department may contact the buyer to verify the buyer's eligibility for the exemption provided by RCW 82.08.0264.

(7) **Do military personnel qualify for the nonresident exemptions?** A member of the armed services who is temporarily stationed in Washington is presumed to be a nonresident, unless that person was a resident of this state when inducted. This presumption does not apply to a civilian employee of the armed services. Nonetheless, a sale to a nonresident member of the armed forces must meet all of the statutory requirements for a retail sales tax exemption or B&O tax deduction. If a vehicle sold to a member of the armed forces will remain in Washington for more than three months, retail sales tax is due on the sale, even if the vehicle is registered in the home state of the armed forces member.

(a) **Military temporary license.** In addition to the exemptions provided under RCW 82.08.0264, a member of the armed forces may alternatively qualify for the retail sales tax and use tax exemptions provided by RCW 46.16.480 if the member obtains a forty-five day nonresident military temporary license from the department of licensing under RCW 46.16.460 and satisfies the requirements of RCW 46.16.480.

(b) **Additional documentation required.** In addition to the documentation otherwise required by this ((~~rule~~)) section, for a sale to a member of the armed forces a seller must retain a copy of military orders showing that the buyer:

(i) Is temporarily stationed in Washington and will leave within three months of the date of purchase; or

(ii) Is permanently reassigned to a new duty station outside Washington and will leave within three months of the date of purchase.

(c) **Military personnel of NATO-member nations.** Pursuant to treaty, a member of the armed forces of any NATO-member nation who is stationed in Washington is considered to be a nonresident for purposes of the RCW 82.08.0264 retail sales tax exemption. The buyer must meet all otherwise applicable requirements for exemption. In addition, the seller must retain proof of the buyer's military assignment in Washington as a member of a NATO-member nation's armed forces.

(8) **Are sales to residents of noncontiguous states exempt**

**from Washington retail sales tax?** RCW 82.08.0269 exempts purchases of tangible personal property from the retail sales tax if the property is purchased for use in states, territories, and possessions of the United States that are not contiguous with any other state. However, the exemption only applies if, as a necessary incident to the contract of sale, the seller delivers the property to the purchaser or the purchaser's designated agent at the usual receiving terminal of the carrier selected to transport the goods, under such circumstances that it is reasonably certain that the goods will be transported directly to a destination in a noncontiguous state, territory, or possession.

RCW 82.08.0269 applies to the sale of motor vehicles when the requirements stated above are met. Therefore, in addition to being exempt from retail sales tax under RCW 82.08.0264 (discussed above), a sale of a motor vehicle to a resident of a noncontiguous state, territory, or possession may qualify for exemption under RCW 82.08.0269. If so, the sale is exempt from retail sales tax but does not qualify for a B&O tax deduction. For more information on the requirements of the RCW 82.08.0269 exemption, including the documentation requirements, see WAC 458-20-193, Inbound and outbound interstate sales of tangible personal property.

(9) **Are sales to residents of states with no sales tax exempt from Washington retail sales tax?** RCW 82.08.0273 exempts purchases of tangible personal property from the retail sales tax if the purchaser is a resident of another state or possession or a province of Canada that does not impose a retail sales tax or use tax of three percent or more. That statute does not apply to purchases of vehicles. Because RCW 82.08.0264 more specifically applies to the sale of vehicles, it takes precedence over RCW 82.08.0273. A resident of another state or possession or a province of Canada that does not impose a retail sales tax or use tax of three percent or more may purchase and take delivery of a vehicle in Washington free of retail sales tax only if the person meets the requirements of RCW 82.08.0264 or 82.08.0269.

(10) **Examples.** The following examples identify a number of 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 after a review of all facts and circumstances.

(a) Buyer purchases a vehicle from Dealer. Buyer provides identification indicating that Buyer is a resident of California and provides California license plates for the vehicle. However, Buyer also states that he intends to use the vehicle in the state of Washington for four months before returning to California. Buyer does not qualify for a sales tax exemption because Buyer will use the vehicle for more than three months in

the state.

(b) Buyer provides proof of residency in Idaho; there are no contrary facts regarding Buyer's residency. Buyer completes the buyer's affidavit, stating that the vehicle is for use out-of-state. Buyer obtains and uses a trip permit issued under authority of RCW 46.16.160 to remove the vehicle from Washington. The Dealer completes a seller's certificate and certifies that the Dealer removed the Washington license plates before delivering the vehicle to Buyer. This sale qualifies for the retail sales tax exemption but not the B&O tax deduction.

(c) Buyer is a Washington resident, employed by out-of-state Corporation X. On behalf of Corporation X, Buyer purchases and accepts in-state delivery of a vehicle from Dealer. The vehicle will be used as a company car out-of-state and will not be used or garaged in Washington. Payment is made by corporate check. Buyer provides a trip permit for transport of the vehicle out of Washington. This sale qualifies for the retail sales tax exemption (but not for the B&O tax deduction) notwithstanding the Washington residency of its employee. The Dealer must record in its records the number of the corporate nonresident permit.

(d) Buyer is a resident of Alaska and purchases a vehicle from Dealer in Washington. The sales contract requires Dealer to deliver the vehicle to Buyer ((~~at~~)) in Anchorage, Alaska. Before shipping the vehicle, Dealer removes the vehicle's Washington state license plates and retains a photocopy of the plates as evidence of the removal. Seller ships the vehicle to Alaska by common carrier. Seller retains a signed copy of the bill of lading, indicating the Seller as consignor and the Buyer as consignee. This sale qualifies for the retail sales tax exemption and a B&O tax deduction.

(e) Buyer is a resident of Alaska and purchases a vehicle from Dealer in Washington. Dealer delivers the vehicle to the Buyer at dockside in Seattle to be shipped to Anchorage, Alaska by common carrier. Dealer retains the exemption certificate and dock receipt required by WAC 458-20-193. This sale qualifies for the retail sales tax exemption provided by RCW 82.08.0269 but not for a B&O tax deduction.

(f) Buyer is a member of the armed forces and provides a copy of her orders showing that she is temporarily stationed in Washington. Before entering military service, buyer resided in another state. Buyer purchases a vehicle from Dealer and licenses it in her home state, but intends to keep the vehicle in this state for over three months. This sale does not qualify for any exemption or deduction. If the vehicle were to be removed from the state within three months, the sale would qualify for the RCW 82.08.0264 retail sales tax exemption but not for a B&O tax deduction.

(g) Buyer owns homes in Washington and Arizona, spending

summers in Washington and winters in Arizona. In October, Buyer purchases a vehicle from Dealer, asserting that he will immediately drive the vehicle to Arizona and license it in that state. Buyer presents an Arizona driver's license for identification and provides a trip permit to remove the vehicle from Washington. Dealer is aware that Buyer lives in Washington for a significant portion of each year. In such a case, the sale would not qualify for the retail sales tax exemption. Under these facts, Buyer has dual residency in Washington and Arizona for tax purposes ((~~and Dealer cannot, in good faith, rely upon a buyer's affidavit from Buyer~~)).

(h) ((~~Buyer provides an Oregon driver's license and states that the vehicle will be licensed in Oregon and used out-of-state. However, when Dealer runs a credit check on Buyer, the credit report contains several references to a Washington address for Buyer. In this situation, Dealer cannot rely in good faith on Buyer's single form of identification as proof of nonresidency. The dealer must obtain additional evidence of nonresidency to substantiate a claimed exemption before making a tax-exempt sale in this situation.~~

~~(i)~~)) Buyer purchases a motorcycle from Dealer in Vancouver, Washington. The motorcycle is equipped for use on public highways. Buyer provides an Oregon driver's license and asserts that the motorcycle will be licensed in Oregon. Buyer also states that the motorcycle will only be used outside of Washington. Buyer places the motorcycle in the back of a truck for transport to Oregon. This sale does not qualify for any exemption or deduction. To qualify for the sales tax exemption, RCW 82.08.0264 requires the Buyer to obtain a trip permit or provide license plates from another state before removing the vehicle from Washington.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 05-14-086, § 458-20-177, filed 6/30/05, effective 7/31/05. Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-177, filed 3/30/83; Order ET 70-3, § 458-20-177 (Rule 177), filed 5/29/70, effective 7/1/70.]