

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING BY JULY 19, 2004.

AMENDATORY SECTION (Amending WSR 03-07-066, filed 3/17/03, effective 4/17/03)

WAC 458-20-208 Exemptions for ~~((adjustments))~~ wholesale sales of new motor vehicles ~~((inventory))~~ between new car dealers and for accommodation sales. (1) **Introduction.** This rule discusses the business and occupation (B&O) tax exemptions for certain wholesale sales of new motor vehicles between new car dealers ~~((and))~~. The rule also discusses the B&O tax exemption for accommodation sales~~((The rule also))~~ and clarifies the applicability of the accommodation sale exemption to exchanges of fungible products, such as gasoline and oil.

(2) ~~((Inventory adjustments))~~ **Wholesale sales of new motor vehicles by new car dealers.** Effective July 1, 2001, RCW 82.04.422 provides a B&O tax exemption for wholesale sales of new motor vehicles by new car dealers to other new car dealers ~~((for purposes of adjusting inventory levels))~~. This exemption does not apply to amounts derived by a manufacturer, distributor, or factory branch as defined in chapter 46.70 RCW.

New car dealers will in most cases find the statutory requirements of this exemption to be less restrictive than those of the accommodation sales exemption discussed in subsection (3) of this rule. Unlike the exemption for accommodations sales, there is no restriction on the amount that the selling dealer can charge the buying dealer, nor is there any requirement that the sale be made to fill an existing order from a customer. While these circumstances may be present in a particular transaction, there is no need to use or rely upon the B&O tax exemption for accommodation sales when the requirements for the exemption for wholesale sales between new car dealers are met. The exemption for wholesale sales of new motor vehicles between new car dealers provided by RCW 82.04.422 is subject to the following conditions ~~((must be satisfied for the exemption to apply))~~.

(a) **New motor vehicle.** The property sold must be a new motor vehicle. For the purposes of this rule, "new motor vehicle" means every motor vehicle that is self-propelled and is required to be registered and titled under Title 46 RCW, has not been previously titled to a retail purchaser, and is not a "used motor vehicle" as defined under RCW 46.04.660. RCW 46.70.011.

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Examples of motor vehicles include passenger cars, trucks, motorcycles, and motor homes.

(b) **Wholesale sale between new car dealers selling the same make of new motor vehicles.** The sale must be a wholesale sale and must occur between new car dealers selling the same make of vehicle. For purposes of determining whether the exemption applies to transactions involving trades, the trade of each new motor vehicle is considered a separate sale.

(i) **Example 1.** A new car dealer sells a new light pick-up truck, Make A, to another new car dealer. The purchasing dealer also sells new Make A passenger vehicles. This sale qualifies for the exemption.

(ii) **Example 2.** New Car Dealer ABC and New Car Dealer XYZ both sell new motor vehicles by Make A and Make X. New Car Dealer ABC sells Make A passenger vehicle to Dealer XYZ. Dealer XYZ sells Make X passenger vehicle to Dealer ABC. Both dealers regularly engage in the business of selling both new motor vehicle makes. Both sales qualify for the exemption.

(iii) **Example ((2)) 3.** A new car dealer sells a new passenger vehicle, Make X, to another new car dealer. The purchasing dealer is not regularly engaged in the business of selling new Make X vehicles. This sale does not qualify for the exemption.

~~((c) Amount paid by the purchasing dealer may not exceed amount paid by selling dealer. The amount paid by the purchasing dealer cannot exceed the amount the selling dealer paid in the acquisition of the new motor vehicle, although the selling dealer may add reasonable expenses for preparing the vehicle for sale or transfer. Actual freight or delivery costs incurred by the seller and billed as such to the buyer may also be added.~~

~~(i) What are reasonable expenses for preparation? Reasonable expenses for preparing the vehicle for sale or transfer include, but are not limited to, the actual cost of additional accessories installed by the selling dealer, such as wheel/tire upgrades, and pin striping.~~

~~Questions concerning whether the exemption is available when other costs are included should be submitted to the department for determination at:~~

~~Department of Revenue
Taxpayer Services
P.O. Box 47478
Olympia, WA 98504-7478~~

~~(ii) What is the effect of holdbacks or discounts on amount~~

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~~paid?~~ The amount paid by the selling dealer may not be reduced by the amount of any manufacturer's holdbacks or discounts received after an article has been sold to adjust inventory levels even though the seller may retain such holdbacks or discounts.

For the following examples, presume a new car dealer receives two new motor vehicles from the manufacturer on June 1st. The manufacturer's sales invoice indicates an invoice price of \$16,600 and a holdback of \$500 for each vehicle. The dealer is entitled to receive the holdback on July 1st, thirty days after being billed for the vehicle by the manufacturer.

(A) ~~Example 1.~~ The new car dealer sells one of the vehicles to another new car dealer on June 10th. The amount paid by the selling dealer in the acquisition of the vehicle is \$16,600.

(B) ~~Example 2.~~ The new car dealer sells the other vehicle to another new car dealer on July 18th. The amount paid by the selling dealer in the acquisition of the vehicle is \$16,100.)

(iv) Example 4. New Car Dealer DEF sells new motor vehicles by Make A and Make X. New Car Dealer LMN sells new motor vehicles by Make A and Make Y. New Car Dealer DEF sells Make A passenger truck to New Car Dealer LMN. New Car Dealer LMN sells Make Y passenger truck to New Car Dealer DEF. Both dealers regularly engage in the business of selling Make A new motor vehicles while only New Car Dealer DEF engages in the business of selling Make Y. The sale of new motor vehicle Make A by Dealer DEF qualifies for the exemption while the sale of Make Y by Dealer LMN does not.

(c) Documentation. A person claiming the B&O tax exemption under RCW 82.04.422 for a wholesale sale of a new motor vehicle must maintain sufficient documentation to verify the exemption. The documentation should identify:

- (i) The buyer's name and address;
- (ii) The seller's name and address;
- (iii) The buyer's UBI/tax registration number;
- (iv) The make, model, and serial number of the motor vehicle;
- (v) The date of purchase;
- (vi) That the buyer and seller both regularly engage in making sales of the same make of new motor vehicle; and
- (vii) The buyer's signature and title.

(3) Accommodation sales. RCW 82.04.425 provides a B&O tax exemption for wholesale sales of tangible personal property by persons who regularly engage in making sales of the type of

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property so sold to other persons who similarly engage in the business of selling such property.

The following conditions must be satisfied for the exemption to apply.

(a) **Amount paid by buyer may not exceed amount paid by seller.** The amount the buyer pays to the seller may not exceed the amount the seller paid to the seller's vendor in the acquisition of the property. Thus, a seller who manufactured the property sold cannot claim the exemption because the property has not been acquired from a vendor.

~~((The instructions in subsection (2)(c) of this rule regarding additional expenses for preparation and the effect of holdbacks and discounts equally apply to the accommodation sale B&O tax exemption provided by RCW 82.04.425.))~~

(i) Expenses associated with preparing property for sale.

A seller may add reasonable expenses for preparing the property for sale, such as actual freight or delivery costs incurred by the seller and billed as such to the buyer. Questions concerning whether the exemption is available when other costs are included should be submitted to the department for determination at:

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

(ii) What is the effect of holdbacks or discounts on amount paid? The amount paid by the seller may not be reduced by the amount of any manufacturer's holdbacks or discounts received after an article has been sold to adjust inventory levels even though the seller may retain such holdbacks or discounts.

For the following examples, presume an equipment dealer receives two tractors from the manufacturer on June 1st. The manufacturer's sales invoice indicates an invoice price of \$16,600 and a holdback of \$500 for each tractor. The dealer is entitled to receive the holdback on July 1st, thirty days after being billed for the tractors by the manufacturer.

(A) Example 1. The equipment dealer sells one of the tractors to another equipment dealer on June 10th. The amount paid by the selling dealer in the acquisition of the vehicle is \$16,600.

(B) Example 2. The equipment dealer sells the other tractor to another equipment dealer on July 18th. The amount paid by the selling dealer in the acquisition of the vehicle is \$16,100.

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(b) **Sale is an accommodation to fill an existing order.** The sale must occur as an accommodation to allow the buyer to fill a bona fide existing order of a customer or occur within fourteen days to reimburse in-kind a previous accommodation sale by the buyer to the seller. A bona fide existing order is present if there is a commitment by the buyer's customer to purchase the property. The buyer must retain records demonstrating the customer's commitment to purchase, such as a written agreement or deposit.

For example, Recreational Vehicle Dealer A purchases a fifth-wheel trailer from Recreational Vehicle Dealer B as an accommodation. Ten days later, Dealer A sells a travel trailer to Dealer B as reimbursement in-kind of the previous accommodation sale. For Dealer A to claim the B&O tax exemption for the sale of the travel trailer to Dealer B, Dealer A must keep sufficient records to document a bona fide existing customer order for the fifth-wheel trailer purchased from Dealer B.

(c) **Documentation.** A person claiming the exemption for an accommodation sale must maintain sufficient documentation to verify the exemption. In addition to the documentation noted above establishing, where pertinent, the existence of a bona fide existing customer order, this documentation must include:

- (i) The buyer's name and address;
- (ii) The seller's name and address;
- (iii) The buyer's UBI/tax registration number;
- (iv) Description of the property purchased, including make, model, and serial numbers as appropriate;
- (v) The date of purchase and the purchase price;
- (vi) A statement by the buyer as to whether the purchase is to fill a bona fide existing order or to reimburse a previous in-kind accommodation sale, including information identifying the previous accommodation sale; and
- (vii) The buyer's signature and title.

(4) **Exchanges of fungible products.** Persons engaged in the selling and distributing of fungible products often enter into exchange agreements. An exchange is a sale regardless of whether it results in a profit because a transfer of the ownership of, title to, or possession of property for valuable consideration occurs. RCW 82.04.040. Exchanges are subject to the B&O tax unless otherwise exempt by law.

(a) **What is a fungible product?** Fungible products are products that lose their physical identity to the point that they cannot be distinguished from like-kind items when

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commingled. Examples of fungible products include gasoline, bulk oil products, grains, logs, wood chips, fruits, and vegetables.

(b) **What is an exchange?** Under typical exchange agreements, a person is required to furnish products to another person selling and distributing the same products, sometimes receiving payment in-kind or with a substitute product at a later date. Exchange agreements may require the person to arrange for direct delivery from his or her vendor to the third party distributor. In some cases, actual title and/or possession of the product may pass directly from the vendor to the third-party distributor.

Persons exchanging fungible products often do so on a regular and continuing basis to cover shortages occurring because of a lack of storage or production facilities, and/or to effect savings in transportation costs. Exchanges may be carried as loans on the books of account (in which case the exchanges are often referred to as "intercompany loans"). Products acquired via an exchange may or may not be carried as regular inventory on the books of account.

(c) **May an exchange of fungible products qualify as an accommodation sale?** The fact that the product sold is a fungible product does not preclude a claim that the sale is exempt as an accommodation sale. However, such a claim will be recognized only if the statutory requirements of RCW 82.04.425 are met.