

**THIS DRAFT IS NOT TO BE CONSIDERED A PROPOSED RULE AND IS ONLY PROVIDED FOR DISCUSSION PURPOSES TO DETERMINE WHAT TOPICS A LATER PROPOSED RULE MIGHT ADDRESS. UNDER NO CIRCUMSTANCES IS THIS DISCUSSION DRAFT TO BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS.**

~~WAC 458-20-190 Sales to and by the United States, its departments, institutions and instrumentalities--Doing business on federal reservations--Cleaning up radioactive waste and other byproducts of weapons production for the United States--Sales to foreign governments.~~

~~Business and Occupation Tax~~

~~The United States, its departments, institutions and instrumentalities, including corporate instrumentalities, are not subject to tax under chapter 82.04 RCW. In computing business tax liability of others, no deduction from value of products, gross sales or gross income is allowed in respect to business transacted with the United States, its departments, institutions or instrumentalities.~~

~~Retail Sales Tax~~

~~The retail sales tax does not apply to sales to the United States, its departments, institutions and instrumentalities, except sales to such institutions as have been chartered or created under federal authority, but which are not directly operated and controlled by the government for the benefit of the public generally.~~

~~Departments, instrumentalities or agencies which are directly operated and controlled by the federal government for the benefit of the public generally include, among others, the departments of Agriculture, Commerce, Interior (including the Bonneville Power Administration and the Tennessee Valley Authority), Justice, Labor, Post Office, State, and Treasury, also the National Military Establishment which includes the departments of the Army, the Navy and the Air Force. Also, the following federal agencies are exempt from payment of sales tax either by reason of congressional exemption in the course of their establishment or by reason of specific federal statutory exemption: The Civil Service Commission, Farm Credit Administration, Federal Housing Administration (including Housing and Urban Development), Federal Land Banks, Federal Reserve Banks, Home Owner's Loan Corporation, Interstate~~

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~~Commerce Commission, Rural Electrification Administration, Social Security Board, United States Maritime Commission, Veterans' Administration, and federally chartered credit unions, federal home loan banks, farm credit banks, export import bank, Federal Savings and Loan Insurance Corporation, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Government National Mortgage Association, Federal National Mortgage Association, Farm Loan Associations, and Central Banks for Cooperatives, the stock of which is owned by the United States.~~

~~— The retail sales tax does not apply to sales made by the United States, or any instrumentality thereof, or by voluntary unincorporated organizations of Army or Navy personnel to authorized purchasers within a federal area. The term "authorized purchasers" means civil employees and members of the armed forces of the United States who are permitted to purchase from such organizations under regulation by the secretaries of Navy, Army, Air Force, or Defense.~~

~~— Sales to persons in the Army or Navy service of the United States, including civilian employees in such service, are not exempt from the retail sales tax, except where such sales are made to them as authorized purchasers by an instrumentality of the United States operating exclusively within a federal area. Furthermore, no exemption is permitted with respect to sales to or by voluntary unincorporated organizations of Army or Navy personnel which are not instrumentalities of the United States, national banking associations, persons licensed to engage in private businesses under federal statutes, or contractors engaged in performing contracts for the United States government. Likewise, the retail sales tax applies upon the sales made to the department of employment security of the state of Washington, irrespective of whether or not such department is reimbursed therefor with federal funds.~~

~~— Sales to federal employees or representatives of the federal government are subject to sales tax, even though the federal government may reimburse them for all or a part of such expenses. Direct purchases by the federal government are sales tax exempt, but purchases by others whether with federal funds~~

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~~or through a reimbursement arrangement are fully subject to the retail sales tax.~~

~~Foreign governments. The retail sales tax does not apply to sales to a foreign government or to any department thereof.~~

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#### **Use Tax**

~~The use tax does not apply upon the use of any article by the United States, its departments, institutions and instrumentalities, except institutions chartered or created under federal authority, but which are not directly operated and controlled by the government for the benefit of the public generally, nor does said tax apply upon the use of any article by a foreign government.~~

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#### **Public Utility Tax**

~~In computing the public utility tax no deduction is allowed with respect to gross operating revenue derived from services supplied or furnished to the United States, its departments, institutions or instrumentalities.~~

(1) Introduction. The State of Washington is prohibited from directly imposing taxes upon the United States and its departments, institutions, or instrumentalities. Persons doing business with the United States are nonetheless subject to the taxes imposed by the State of Washington, unless specifically exempt. This rule explains the tax reporting responsibilities of persons making sales to the United States and to foreign governments. The rule also explains the tax reporting responsibilities of persons engaging in business activities within federal reservations and cleaning up radioactive waste and other byproducts of weapons production for the United States.

Persons engaged in construction, installation, or improvement to real property of or for the United States should also refer to WAC 458-20-17001 (Government Contracting, etc.). Persons building, repairing, or improving streets, roads, etc, that are owned by the United States should also refer to WAC

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458-20-171 (Building, repairing or improving streets, roads, etc.). Persons selling cigarettes to United States or any instrumentality thereof should also refer to WAC 458-20-186 (Tax on cigarettes).

(2) "United States" defined. For the purposes of this rule, the term "United States" means the federal government, including the executive, legislative, and judicial branches, its departments, agencies, instrumentalities, corporations, and institutions.

(a) The term includes, but is not limited to, the departments of Agriculture, Commerce, Defense, Education, Energy (including the Bonneville Power Administration), Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Treasury, and Veteran Affairs, the Environmental Protection Agency, the National Aeronautics and Space Administration, the Federal Emergency Management Agency, the General Services Administration, the Nuclear Regulatory Commission, the Social Security Administration, the Farm Credit Administration, the Export Import Bank, and the United States Postal Service.

(b) It includes the departments of the Army, the Navy, the Air Force, and the United States Civil Air Patrol.

(c) The term also includes federal entities exempt of tax either by reason of congressional exemption in the course of their establishment as federal instrumentalities or by reason of specific federal statutory exemption, including but not limited to Amtrak, Farm Credit Banks, the Farm Credit System Financial Assistance Corporation, the Farm Credit System Insurance Corporation, Farm Loan Associations, Federal Credit Unions, the Federal Deposit Insurance Corporation, Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation (Freddie Mac), Federal Land Bank Associations, the Federal Reserve Bank, the Federal National Mortgage Association (Fannie Mae), the Government National Mortgage Association (Ginnie Mae), Central Banks for Cooperatives, the American National Red Cross (Red Cross), the Resolution Trust Corporation, and the Student Loan Marketing Association (SLMA or Sallie Mae).

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(3) Prohibition against taxing the United States. The State of Washington is prohibited from imposing taxes directly upon the United States.

(a) This prohibition applies to taxes imposed for the privilege of engaging in business such as the B&O (chapter 82.04 RCW) and the public utility (chapter 82.16 RCW) taxes.

It also applies to taxes imposed on a buyer or user of goods or services, examples including but not limited to the:

(i) State and local retail sales and car rental taxes (chapters 82.08 and 82.14 RCW);

(ii) State and local use tax (chapters 82.12 and 82.14 RCW);

(iv) Solid waste collection tax (chapter 82.18 RCW); and

(v) Local government taxes such as the special hotel/motel (chapter 67.28 RCW) and convention and trade center (chapter 67.40 RCW) taxes.

(b) The state is also prohibited from requiring the United States to collect taxes imposed on the buyer (e.g., the retail sales tax) as an agent for the state. However, persons purchasing from the United States are nonetheless responsible for remitting use tax upon the property unless specifically exempt by law.

(4) Persons doing business with the United States. Persons selling goods or services to the United States are subject to taxes imposed on the seller, such as the B&O and public utility taxes, unless a specific tax exemption applies.

(a) Persons selling goods or services to the United States are also subject to the retail sales or use tax on property they use or consume when performing services for the United States, unless specifically exempt.

(b) In the case of products manufactured or produced by the person using the products as a consumer, the measure of tax is generally the value of the products as explained in WAC 458-20-112 (Value of products). However, if the articles manufactured or produced by the user are used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of articles used is the value of the ingredients of such articles.

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(c) When articles or goods used are acquired by bailment, the measure of the use tax to the bailee is the reasonable rental with the value to be determined as nearly as possible according to the rental price at the place of use of similar products of like quality and character. See WAC 458-20-211 (Leases or rental of tangible personal property, bailments). Persons who incorporate government provided articles into construction projects or improvements made to real property of or for the United States should refer to WAC 458-20-17001 (Government Contracting, etc.) for more specific tax-reporting information.

(d) Manufacturers or processors for hire may be eligible for the retail sales or use tax exemption provided by RCW 82.08.02565 and 82.12.02565 on machinery and equipment used directly in a manufacturing or research and development operation. See WAC 458-20-13601 (Manufacturers and processor for hire--Sales and use tax exemption for machinery and equipment).

(e) Persons who contract with the United States may, for federal accounting purposes, be contractually required to invoice goods or services provided to the United States by third parties. These amounts should be excluded from the person's gross income when reporting on the combined excise tax return if all of the following conditions exist with respect to the goods or services:

- (i) The third party directly invoices the United States;
- (ii) The United States directly pays the third party; and
- (iii) The person has no liability, either primarily or secondarily, for making payment to the third party or for remitting payment to the third party.

(5) Documenting exempt sales to the United States. Only those sales made directly to the United States are exempt of retail sales tax or other tax imposed on the buyer. Sales to employees or representatives of the United States are subject to tax, even though the United States may reimburse the employee or representative for all or a part of the expense. Purchases by others, whether with federal funds or through a reimbursement

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arrangement, are subject to tax unless specifically exempt by law.

To be entitled to the exemption, the purchase must be paid for using a qualified US government credit card, a check from the United States payable to the seller, a United States voucher, or with cash accompanied by the federal SF (Standard Form) 1165.

(a) Documentation of the tax-exempt nature of sales made to the United States is accomplished by maintaining a copy of the qualified United States government credit card receipt, a copy of the federal government voucher, or a signed copy of form SF 1165.

(b) Charges made through the use of a qualified United States government credit card are charged to a central billing account and are directly paid by the United States. Qualified United States government credit cards include the following:

(i) A MasterCard with a prefix of 5568, and a sixth digit of 0, 6, 7, 8, or 9;

(ii) A Visa card with a prefix of 4486 or 4716, and a sixth digit of 0, 6, 7, 8, or 9; or

(iii) For periods prior to November 30, 1998, an American Express card with a prefix of 3783-9 or an I.M.P.A.C. Visa card with a prefix of 4716.

(6) **Doing business on federal reservations.** The state of Washington has jurisdiction and authority to levy and collect taxes upon persons residing within, or with respect to business transactions conducted upon, federal reservations. 4 U.S.C. §§ 105-110. The term "federal reservation," as used in this rule, means any land or premises within the exterior boundaries of the state of Washington that are held or acquired by and for the use of the United States, its departments, institutions or instrumentalities. This means that a concessionaire operating within a federal reservation under a grant or permit issued by the United States or by a department or instrumentality thereof is taxable to the same extent as any private operator engaging in a similar business outside a federal reservation and without specific authority from the United States.

(a) Persons making retail sales to members of the armed

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forces or others residing within or conducting business upon federal reservations are required to collect and remit retail sales tax.

(b) Washington cigarette tax stamps must be affixed to all cigarettes sold to persons residing within or conducting business upon federal reservations: Provided however, that such stamps need not be affixed to cigarettes sold to the United States or any instrumentality thereof including voluntary organizations of military personnel authorized by the Secretary of Defense or the Secretary of the Navy or by the United States or any instrumentality thereof to authorized purchasers, for use on such reservation. See WAC 458-20-186 (Tax on cigarettes).

**(7) Sales made to authorized purchasers of the United States.** As explained in subsection (3)(b), while sales by the United States are exempt of retail sales tax the purchaser is generally responsible for remitting use tax. The state is prohibited from imposing use tax on the use of tangible personal property sold by the United States, instrumentalities thereof, or by voluntary unincorporated organizations of armed forces personnel to authorized purchasers. 4 U.S.C. § 107(a). A person is an "authorized purchaser" only with respect to purchases he or she is permitted to make from commissaries, ship's stores, or voluntary unincorporated organizations of personnel of any branch of the Armed Forces of the United States, under regulations promulgated by the departmental Secretary having jurisdiction over such branch. 4 U.S.C. § 107(b).

"Voluntary unincorporated organizations" are those organizations comprised of armed forces personnel operated under regulations promulgated by the departmental Secretary having jurisdiction over such branch. Examples of voluntary unincorporated organizations are post flying clubs, Officers or Noncommissioned Officers open messes, and recreation associations.

**(8) Purchases by persons using federal funds.** Retail sales or use tax is applicable to purchases made by any buyer, including the state and all political subdivisions, irrespective

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of whether or not the buyer uses or is reimbursed with federal funds.

(9) **Cleaning up radioactive waste and other byproducts of weapons production and nuclear research and development.** RCW 82.04.263 provides a special tax rate for the gross income derived from cleaning up for the United States radioactive waste and other byproducts of weapons production and nuclear research and development. This tax rate applies whether the person performing these activities is a general contractor or subcontractor.

(a) **Definition.** The statute defines the term "cleaning up radioactive waste and other byproducts of weapons production and nuclear research and development" to be the activities of:

(i) The handling, storing, treating, immobilizing, stabilizing, or disposing of radioactive waste, radioactive tank waste and capsules, nonradioactive hazardous solid and liquid wastes, or spent nuclear fuel;

(ii) Conditioning of spent nuclear fuel;

(iii) Removing contamination in soils and ground water;

(iv) Decontaminating and decommissioning of facilities; and

(v) Performing activities integral and necessary to the direct performance of cleanup.

(b) **Integral and necessary to the direct performance of cleanup.** To be considered an activity integral and necessary to the direct performance of cleanup, the need for the activity must directly arise from the performance of cleanup of radioactive waste and other byproducts of weapons production and nuclear research and development. For example, if it is essential that workers immobilizing radioactive waste be medically screened prior to, during, and after handling the waste, the medical services provided are integral and necessary to the direct performance of cleanup. Another example of an activity considered integral and necessary is security services provided for the specific cleanup site.

(c) **Purchase and/or use of tangible personal property.** Persons cleaning up radioactive waste and other byproducts of weapons production and nuclear research and development for the United States are consumers of any property they use or consume

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when performing these services. RCW 82.04.190. Therefore, the purchase and/or use of property used or consumed in the cleanup is subject to retail sales and/or use tax.

(10) **Sales to foreign governments.** Foreign governments are not subject to the retail sales and use taxes. Income from sales of goods and services to foreign missions and their personnel remains subject to the business and occupation tax.

(a) **Qualifying exempt sales to foreign governments.** Only those sales made directly to the foreign government are exempt of retail sales tax or other tax imposed on the buyer. To be entitled to the exemption, the purchase must be paid for using a tax exemption card issued by the United States Department of State pursuant to 22 U.S.C. 4301 et seq. The United States issues these tax-exemption cards to missions and diplomats whose home countries offer a similar exemption to U.S. diplomats. The exemption can also apply to retail car rental taxes, and local taxes such as the special hotel/motel, convention and trade center, King County food and beverage, and Regional Transit Authority taxes.

(b) **Categories of tax exemption cards.** The first category of tax exemption card is a mission tax-exemption card issued to individuals authorized to make official purchases on behalf of the mission only. The bill or invoice must be made out to the mission and payment can be made only by mission credit card or mission check. The second card allows for certain tax-exempt personal purchases by individuals associated with the mission who are authorized to make tax-exempt purchases.

(c) **Specific restrictions.** The colored stripe on each tax exemption card identifies the level of exemption and restrictions on the use of the card. The vendor should closely examine the color-coded exemption card to determine the monetary limits, type of tax, and other specific information relating to the authorized exemption. It is appropriate for the vendor also to request additional identification, such as a diplomatic or consular identification card, when a diplomatic tax exemption card is presented.

A similar exemption is also granted for representatives from Taiwan for whom a blue stripe card is issued. The card is

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issued by the American Institute in Taiwan instead of the United States Department of State. Only the person whose photograph appears on the card is entitled to the exemption.

(d) **Seller's documentation requirements.** The seller must retain written evidence to document the tax-exempt nature of the sale. The invoice, record, or other document (which may be a photocopy of the exemption card) must show the name of the purchaser, the name of the mission, the number and expiration date of the tax exemption card, and the minimum level of exemption specified on the card.