

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

WAC 458-20-250 (~~(Refuse-)~~)Solid waste collection (~~(business--Core deposits and credits, battery core charges, and tires)~~) tax. (~~((1))~~) (1) Introduction. This section (~~((administers the taxes on solid waste collection and the special provisions for core deposits and credits, battery core charges, and tires~~

(a) Chapter 282, Laws of 1986 established the specific business activity of the "refuse collection business" and imposed a "refuse collection tax" similar in nature to retail sales tax. The burden of this tax is upon the ultimate consumer of the refuse collection service. The tax rate is three and six tenths percent (.036), and the tax measure is the total consideration charged to the consumer customer for the services. Chapter 431, Laws of 1989 changes the name of this tax from a refuse collection tax to a solid waste collection tax.

(b) Chapter 431, Laws of 1989, imposes, effective July 1, 1989, an additional tax of 1 percent of the consideration charged for the service. Generally, the tax is imposed in addition to and is similar to the refuse collection tax enacted in 1986. However, unlike the refuse collection tax, the measure of the new 1 percent tax is limited to the charges for the actual solid waste collection services that are provided and a maximum tax measure is provided for residential collection service charges.

(e)) explains how the solid waste collection tax imposed under chapter 82.18 RCW applies; who is required to collect the tax; and the B&O, sales, and use tax obligations of persons providing solid waste collection services. ((For ease of administration and accounting, the 3.6 percent tax shall retain its former name and be called for purposes of this section the "refuse collection tax," and, the tax imposed in 1989, the 1 percent tax, shall be called the "solid waste collection tax.")) The tax imposed under chapter 82.18 RCW was previously known as the "refuse collection tax." For the purposes of this section, the tax is referred to by its statutory name, the "solid waste collection tax."

~~((2) Neither the 1986 law or the 1989 law expressly establishes a specific business tax classification ((for the gross receipts of persons engaged in)) the refuse solid waste collection business. Thus, because of the provisions of RCW 82.04.290, such persons are subject to the))~~ service or other activities classification of business and occupation tax.

(3) For purposes of this section the following terms will apply:

—— (a) "Refuse collection business" — "solid waste collection business" means every person who receives waste for transfer, storage, or disposal including but not limited to all collection services, public or private dumps, transfer stations, and similar operations.

—— (b) "Person" shall have the meaning given in RCW 82.04.030 or any later, superseding section.

—— (c) "Waste" "solid waste" mean garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use. The term does not include hazardous or toxic waste nor does it include material collected primarily for recycling or salvage.

—— (d) "Taxpayer" means that person upon whom the refuse solid waste collection tax is imposed, that is, the private or commercial consumer customer.

—— (e) "Department" means the department of revenue.

—— (f) "Consideration charged for the services" means the total amount billed to a taxpayer as compensation for refuse solid waste collection services, without any deduction for any costs

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~~of doing business or any other expense whatsoever, paid or accrued, provided, that the term does not include any amount included in the charges for materials collected primarily for recycling, nor the refuse solid waste collection tax itself whether separately itemized or not, nor any similar utility taxes or consumer taxes, imposed by the state or any political subdivision thereof or any municipal corporation, directly upon the consumer taxpayer and separately itemized on the taxpayer's billing. Also, the term does not include late charges or penalties which may be imposed for nontimely payment by taxpayers.))~~

~~(2)(a) **What is "solid waste"?** "Solid waste" or "waste" means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use. The term does not include hazardous or toxic waste nor does it include material collected primarily for recycling or salvage.~~

~~(b) **Who is required to collect the solid waste collection tax?** Every person who receives waste for transfer, storage, or disposal including but not limited to all collection services, public or private dumps, transfer stations, and similar operations, must collect the solid waste collection tax from the private or commercial consumer.~~

~~(c) **What is the measure of the tax?** The solid waste collection tax applies to the consideration charged for solid waste collection services.~~

~~"Consideration charged for the services" is the total amount billed as compensation for solid waste collection services, without any deduction for any costs of doing business or any other expense whatsoever, paid or accrued. The term does not include:~~

- ~~(i) Any amount included in the charges for materials collected primarily for recycling;~~
- ~~(ii) The solid waste collection tax itself, whether separately itemized or not;~~
- ~~(iii) Any utility taxes or consumer taxes, imposed by the state or any political subdivision thereof or any municipal corporation, directly upon the consumer and separately itemized on the taxpayer's billing; or~~
- ~~(iv) Late charges or penalties which may be imposed for nontimely payment.~~

~~((4) **Refuse and solid waste collection tax measure.**~~

~~— (a) The refuse collection tax applies to the consideration paid for refuse solid waste collection services. The rate of the tax is 3.6 percent of the amount charged for garbage collection and disposal the services.~~

~~(b) For purposes of the solid waste collection tax, the following terms will apply.~~

~~(i) "Standby," "availability," or "base" charges mean those charges to a residential customer who receives no actual garbage pickup service.~~

~~(ii) "Residential collection service" has its ordinary meaning and is per can garbage collection service other than commercial or industrial service. For purposes of this section, a residential collection service is that service provided for each housing unit. In the case of multiple housing units in a single structure such as apartments, condominiums, or duplexes, or, an association of housing units such as a mobile home park or retirement village, the service is deemed commercial unless each occupier of a housing unit is individually provided can service and is individually billed for such service.~~

~~(iii) "Can" or "can equivalent" has its ordinary meaning and shall include a receptacle for waste collection made of durable, corrosion resistant material, watertight with a close fitting~~

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cover, with two handles, and does not exceed 32 gallons, 4 cubic feet or 65 lbs. (including contents), nor weigh more than 12 lbs. when empty. (This definition comports with the definition of "unit" by the utilities and transportation commission.) For purposes of this section, containers of 60 gallon or more capacity, commonly called "toters," are considered more than 2 cans.

(c) The solid waste collection tax applies to the consideration paid for actual solid waste collection services provided and utilized by the customer and does not apply to amounts charged by a solid waste collection business for "standby," "availability," or "base" charges where no actual garbage collection occurs. Additionally, the tax does not apply to amounts charged for materials primarily collected for recycling.

(d) For a residential customer, the tax measure is the consideration paid, but not more than \$8.00 of the monthly charge for garbage pickup service of less than 2 cans, or, not more than \$12.00 of the monthly charge for 2 cans or more.

(i) Example. City X provides residential garbage collection service to a customer and the customer has subscribed to less than two can service. The monthly charge is \$11.00 for the service which includes a charge of \$2.00 for special pickup of recyclables. After adjustment for the recycling charges of \$2.00, the refuse collection tax measure is \$9.00 and the solid waste collection tax measure is \$8.00. The tax measure for solid waste residential pickup is limited to not more than \$8.00 of monthly charge paid. The refuse collection tax is 32 cents ($\$9.00 \times .036$), and, the solid waste collection tax is 8 cents ($\$8.00 \times .01$), for a total refuse((solid waste)) collection tax of 40 cents.

(e) For computation of the maximum solid waste collection tax due for residential customers, extra solid waste collected effects the tax base only for a residential customer with less than 2 can service. The tax measure for a customer with 2 or more can service will never exceed \$12.00. The tax measure for a customer with less than 2 can service does not exceed \$8.00 unless the extras collected are an additional can equivalent sufficient to change the less than 2 can customer to a 2 can or more customer. A less than 2 can customer becomes a 2 can or more customer when, over a reasonable period of time, i.e., 6 months, charges for less than 2 can service plus extras equals or exceeds the customary charges for 2 can service.

(i) Example. Residential customer Z has less than 2 can service for which Z is charged \$9.00 per month and results in a refuse tax of 32 cents ($\$9.00 \times .036$) and a solid waste tax of 8 cents ($\$8.00 \times .01$) for a total tax of 40 cents. For 7 consecutive months Z has extra trash bags picked up each month. The monthly charge including extras is \$11.00 and the customary 2 can or more charge is \$12.00. The refuse tax for each month is 40 cents ($\$11.00 \times .036$) and the solid waste tax is 8 cents ($\$8.00 \times .01$) for a total tax of 48 cents. Z remains a less than 2 can customer during the period as the monthly charge, including the charge for extras, is less than the customary 2 can or more rate. The solid waste tax measure is limited to the consideration paid up to \$8.00, while the refuse tax is not so limited.

(ii) Example. Residential customer X has 2 or more can service for which X is charged \$9.00 per month resulting in a refuse tax of 32 cents ($\$9.00 \times .036$) and a solid waste tax of 9 cents ($\$9.00 \times .01$) for a total tax of 41 cents. One month X has several trash bags picked up and the charge for this month is \$13.00. The refuse tax is 47 cents ($\$13.00 \times .036$) and the solid

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waste tax is 12 cents ($\$12.00 \times .01$) for a total tax of 59 cents. The solid waste tax measure for 2 can or more service is limited to the consideration paid up to \$12.00 while the refuse collection tax measure is not so limited.

(iii) Example. A city provides residential garbage collection for which the city charges a \$5.00 base fee and a total charge of \$9.00 for less than 2 can service and \$13.00 for 2 can or more service. A customer chooses to deliver his garbage by his own means to the local disposal site for which the customer is charged \$10.00 per month. The city charges the customer on his monthly utility bill the \$5.00 base fee. The refuse tax collected at the disposal site is 36 cents ($\$10.00 \times .036$) and the solid waste tax collected at the disposal site is 10 cents ($\$10.00 \times .01$) for a total collection at the disposal site of 46 cents. The refuse tax collected by the city is 18 cents ($\$5.00 \times .036$) and no solid waste tax is collected by the city because no actual garbage collection services were provided the customer. As the per can limitations apply only to residential pick up service, any garbage delivered to disposal site by anyone other than another refuse solid waste collection business will always incur a combined refuse solid waste tax of 4.6 per cent of the consideration paid.)

(3) **Reporting and collection obligations.** The person who collects the charges for ((refuse))solid waste collection services from the taxpayer is responsible for collecting the ((refuse))solid waste collection tax and remitting it to the state.

((6) The law provides that i)) (a) **Failure to collect tax.** If any person charged with collecting the tax fails to bill the taxpayer for it, or to notify the taxpayer in writing that the tax is due, then that person shall be personally liable for the tax. Thus, unlike the retail sales tax, the ((refuse))solid waste collection tax may be included within the gross ((refuse)) fee or charge billed to taxpayers and need not be separately itemized on such billings, but only if such taxpayers are notified in writing that the tax has been imposed and is being collected. Nothing prevents any ((refuse))solid waste collection business from separately itemizing the tax on customer billings, at its option.

((7) Furthermore,) (b) **Failure to remit collected tax.** If any person collects ((that tax from the taxpayer)) the tax and fails to pay it to the department in the manner provided in this section, for any reason whatever, ((that)) the person shall be personally liable for the tax.

((8)) (4) **Due date.** The ((refuse))solid waste collection tax is due from the taxpayer within twenty-five days from the date the taxpayer is billed for the ((refuse))solid waste collection services. The ((refuse collection tax and the)) solid waste collection tax shall must be separately reported upon lines provided on the combined excise tax return.

((9)) The tax is due to be remitted to the department by the person collecting it at the end of the tax reporting period in which the tax is received by that person.

((10)) (5) **Partial payments.** If a taxpayer makes only a partial payment of the amount billed for the services and tax, the amount paid must first be used to remit the ((refuse))solid waste collection tax to the department. ((This)) The tax has first priority over all other claims against the amount paid by the taxpayer.

((11)) (6) **Sales to the federal government, Indians and Indian tribes.** The federal government, its agencies and instrumentalities, and all ((refuse)) solid waste collection service contracts with such federal entities are not subject to the ((refuse))solid waste collection tax.

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~~((There are no other taxpayers expressly exempted from paying the refuse solid waste collection tax. Any other taxpayer claiming exemption of this tax for any reason whatsoever must provide the refuse solid waste collection business with proof of its entitlement to exemption. The department will verify such claims upon request.))~~ Similarly, Indians and Indian tribes may be exempt from the tax. Refer to WAC 458-20-190 and 192 for more information about tax reporting and recordkeeping obligations relating to sales to the federal government and Indians or Indian tribes.

~~((12))~~ **(7) Transactions with multiple collection businesses.** To prevent pyramiding or multiple taxation of single transactions, the ~~((refuse-))~~solid waste collection tax does not apply to any person other than ~~((the taxpayer. It is a tax upon))~~ the ultimate consumer~~((customer))~~ of the ~~((refuse-))~~solid waste service.

~~((13))~~ **(a) Exemption certificate.** Persons engaged in the solid waste collection business by operating facilities for the transfer, storage, or disposal of waste, including public and private dumps, and who provide such services directly to taxpayers for a charge, are liable for the collection of the solid waste collection tax on such charges. However, persons who collect the ~~((refuse-))~~solid waste collection tax and who, themselves, utilize the further services of others for the transfer, storage, or disposal of the waste collected are not required to again pay the tax to such other service providers. ~~((However,))~~ In order to be exempt of such tax payment a ~~((refuse-))~~solid waste collection business must provide other ~~((refuse-))~~solid waste service providers with a ~~((refuse-))~~ solid waste collector's exemption certificate in the following form:

~~((a))~~ We hereby certify that we are engaged in the ~~((refuse-))~~solid waste collection business and are registered with the state department of revenue to collect and report the ~~((refuse))~~ solid waste collection tax imposed under chapter 82.18 RCW ~~((282, Laws of 1986 and chapter 431, Laws of 1989))~~. We certify further that the ~~((refuse-))~~solid waste collection tax due with respect to the ~~((refuse-))~~solid waste collection business being performed under this certificate has been or will be collected and paid and that we are exempt ~~((of [for]))~~ from further payment of such tax on charges for any ~~((refuse-))~~solid waste collection services being procured by us.

Business Name Authorized

Signature

Business Address Date

Revenue Registration No.

U.T.C. Certificate of Public Necessity No.

If not regulated by U.T.C., please check here

(b) Blanket Exemption certificates. Blanket certificates may be provided in advance by ~~((refuse-))~~solid waste collectors or other persons who collect the customer charges for ~~((refuse-))~~solid waste collection and who are liable for collecting and remitting the ~~((refuse-))~~solid waste collection tax. A blanket certificate must be renewed every four years.

(c) ~~((Refuse-)) Good faith acceptance of certificates.~~ Solid waste collection businesses

which provide services for the transfer, storage, or disposal of waste, and who accept completed certifications in good faith are not required to collect and remit the ~~((refuse-))~~solid waste collection tax and will not be held personally liable for it.

~~((14) Persons engaged in the refuse solid waste collection business by operating facilities for the transfer, storage, or disposal of waste, including public and private dumps, and who provide such services directly to taxpayers for a charge, are liable for the collection of the refuse collection tax on such charges.))~~

~~((15))~~ **(d) Examples.** Examples of taxable and tax exempt transactions are:

~~((a))~~ **(i)** A private person or commercial customer hauls its own waste to a dump site for disposal and pays a fee - the fee is subject to the ~~((3.6 percent refuse collection tax and the 1 percent))~~ solid waste collection tax.

~~((b))~~ **(ii)** A ~~((refuse-))~~solid waste collection company picks up and hauls residential or commercial waste to a dump for disposal - this company bills the customer for the tax and need not pay the tax upon any further charge made by the dump site operator, by providing an exemption ~~((refuse solid waste collector's))~~ certificate.

~~((c))~~ **(iii)** A city provides ~~((refuse-))~~solid waste collection services to its residents through an independent hauler under a negotiated contract, and uses a county operated land fill. The city bills the residents on their utility bills. The ~~((3.6 percent and 1 percent taxes apply))~~ tax applies to the ~~((refuse-))~~solid waste portion of the utility bill adjusted as provided in this section. These taxes do not apply to any charge paid by the city to the hauling company, nor to any charge made by the county to the city for dumping services. The city must provide the hauler and the county with an exemption ~~((refuse solid waste collector's))~~ certificate.

~~((16) The refuse solid waste collection tax is imposed in much the same manner as retail sales tax; that is, it is payable by the refuse solid waste consumer to the refuse solid waste service provider who does the customer billing. Likewise, other refuse solid waste service providers up the chain of transactions from the billing provider are treated in the same manner as wholesalers and need not collect the tax if the appropriate certificate is taken.~~

~~(17)**Business and occupation tax.** There is no exemption from business and occupation ("B&O") tax measured by gross income of any person engaged in the refuse solid waste collection business. Such persons are subject to the service classification of business and occupation tax measured by their gross receipts. (See RCW 82.04.290.) Also, there is no general provision under the law for the nonpyramiding effect of the business and occupation tax. Thus, each refuse solid waste collection business is separately liable for this tax on its total gross receipts without any deduction for any costs of doing business or any amounts paid over to other refuse solid waste service providers. Also, all amounts designated as late charges or penalties are included within this business tax measure.~~

~~————(18) The refuse solid waste collection business is an "enterprise activity," as defined in WAC 458-20-189, when it is funded over fifty percent by user fees. Thus, the amounts derived from this activity are not exempt of business and occupation tax even though they may be charged by governmental entities. (See RCW 82.04.419.))~~

(8) Business and occupation tax. A solid waste collection business is subject to service and other activities B&O tax on the gross income from solid waste collection activities. There is no deduction for any cost of doing business or any amounts paid over to other solid waste collection businesses. Late charges or penalties are subject to the service and other activities B&O tax.

Solid waste collection is an "enterprise activity," when funded over fifty percent by user

fees. Amounts derived from this activity by a local governmental entity are subject to service and other activities B&O tax. See RCW 82.04.419, 82.04.4291, and WAC 458-20-189.

~~((19) The exemption of refuse((solid waste)) collection tax for the federal government, its agencies and instrumentalities, does not apply for business and occupation tax. Thus, refuse-solid waste collection businesses who charge such federal entities for services, under contract or otherwise, must pay the business and occupation tax upon such gross receipts.~~

~~(20) Persons engaged in the refuse-solid waste collection business may be entitled to certain express deductions or exemptions from business and occupation tax for specific reasons unrelated to the nature of their refuse-solid waste business activity. (See e.g. RCW 82.04.419 and 82.04.4291.)~~

~~(21)) **(9) Sales of containers.** ((Refuse-))Solid waste collection businesses which provide waste receptacles, containers, dumpsters, and the like to their customers for a charge, separate from any charge for collection of the waste, are engaged in the business of renting tangible personal property taxable separate and apart from the ((refuse-))solid waste collection business. Charges for such rentals, however designated, are subject to retailing ((business and occupation)) B&O and retail sales taxes when they are billed separately or are line itemized on customer billings. ((Such businesses are engaged in more than one taxable kind of business activity and are separately taxable on each. (See RCW 82.04.440.)~~

~~(22) **Retail sales tax.**) Persons who separately charge and bill customers for waste receptacles, as explained earlier, must collect and remit the retail sales tax on the itemized rental price, fee, or other consideration, however designated, charged for the receptacles.)~~

(10) Sales and use tax obligations for the use of property. ((23) Refuse-)) Solid waste collection businesses are themselves the consumers of all tangible personal property purchased for their own use in conducting such business, other than items for resale or renting to customers((fs)), e.g., rented receptacles. Retail sales tax must be paid to materials suppliers and providers of such tangible consumables. (See RCW 82.04.050.) If the seller does not collect retail sales tax, the solid waste collection business must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. Deferred sales or use tax should be reported on the buyer's excise tax return. However, the excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. For detailed information regarding the use tax, refer to WAC 458-20-178 (Use tax).

~~((24) **Use tax.** The use tax is due upon all tangible personal property used as consumers by refuse-solid waste collection businesses, upon which the retail sales tax has not been paid. (See RCW 82.12.020.)~~

~~(25) Core deposits and credits – Battery core charges.~~

~~—— (a) For purposes of this section the following terms apply.~~

~~—— (i) "Core deposits or credits" means the amount representing the value of returnable products such as batteries, starters, brakes, and other products with returnable value added for purposes of recycling or remanufacturing.~~

~~—— (ii) "Battery core charge" means that amount of the retail selling price of a vehicle battery, not less than \$5.00, which is retained by the seller when the purchaser has no used battery to exchange or trade in.~~

~~—— (b) Retail sales tax.~~

~~—— (i) The retail sales tax does not apply to the consideration received as core deposits or~~

credits in a retail or wholesale sale when a purchaser exchanges or trades in a core to the seller. (RCW 82.08.010, WAC 458-20-247, and chapter 431, Laws of 1989). Therefore, when a purchaser of a vehicle battery, starter, etc., exchanges or trades in a used battery, starter, etc., to the seller, retail sales tax does not apply to the value of the used property exchanged or traded in.

(ii) Chapter 431, Laws of 1989, effective July 23, 1989, requires the retail selling price of a vehicle battery to include a core charge of not less than \$5.00. The core charge must be omitted from the sales price when the purchaser offers to the seller a used battery of equivalent size. The retail sales tax does apply to the core charge amount included in the sales price of a vehicle battery when the purchaser does not offer to the seller a used battery for exchange or trade in. The exemption for "core deposits or credits" applies only when an article of tangible personal property is returned by the purchaser to the seller for the purpose of recycling or remanufacturing. Upon the offer by the purchaser to the seller of a used battery of equivalent size for exchange or trade in within 30 days after the purchase date of the battery, the seller shall refund to the purchaser the core charge amount and the retail sales tax paid on such core charge.

(c) Use tax. The use tax does not apply to the value of core deposits or credits in a retail or wholesale sale.

(d) Business and occupation tax. The core deposit and credit exemptions apply only to the amount of retail sales tax and use tax to be collected and paid. There is no core deposit or credit exclusion for B&O tax. It is important to note that the base for B&O tax and retail sales tax may be different amounts. Thus, the gross receipts under the appropriate classification of B&O tax, retailing, wholesaling, manufacturing, etc., continues to include the value of core deposits and credits. Battery core charges are included as gross receipts in the retailing classification of the B&O tax.

(e) Examples:

(i) A customer wishes to purchase from an auto parts store a new replacement battery and a reconditioned starter. He brings with him a battery core and a starter core. The purchase price of the new battery is \$60.00 less \$3.00 for the value of the core exchanged; and, the purchase price of the starter is \$50.00 less \$5.00 for the starter core. Retailing B&O tax is due upon the total value of cash plus core value, in this case \$110.00 (\$60.00 + 50.00). However, retail sales tax is due only on \$102 (\$57.00 + 45.00), which is the purchase price less the core deposits. The customer pays \$102.00 plus sales tax for the battery and the starter.

(ii) A customer wishes to purchase a new replacement battery which sells for \$62.00. The customer has no returnable battery core to exchange. Thus, a battery core charge of \$5.00 or more must be added to the sales price for a total of \$67.00 or more. Both retail sales tax and B&O tax apply to the actual price paid by the customer.

(iii) In example (ii) above, the customer returns to the store within 30 days with a proof of purchase and a used battery of equivalent size. The seller must refund the \$5.00 or more battery core charge plus the sales tax paid the \$5.00 or more. B&O tax is due upon the value of the battery, \$62.00.

(26) Tires. Chapter 431, Laws of 1989 amends RCW 70.95.510 and, effective October 1, 1989, levies a \$1 per tire fee on the retail sale of new replacement tires. The \$1 per tire fee levied replaces the .012 percent tax imposed in 1985. The fee imposed shall be paid by the buyer and collected by the seller. The fee collected from the buyer by the seller shall be paid to the department in accordance with RCW 82.32.045 less 10 percent retained by the seller.

(a) Retail sales tax—Use tax—Business and occupation tax. Chapter 431, Laws of 1989 exempts the fee from retail sales tax and use tax. Neither the fee nor the part of the fee retained

by the seller is subject to business and occupation tax. The seller is only the state's collecting and reporting agent for the portion paid to the department. The 10 percent retained portion is expressly authorized for use by the seller to defray costs associated with the proper management of waste tires.))



