

This rule was adopted on August 23, 2006 and becomes effective September 23, 2006. It may be used to determine tax liability on and after the effective date, until the codified version is available from the code reviser's office.

AMENDATORY SECTION (Amending Order ET 83-1, filed 3/30/83)

WAC 458-20-243 Litter tax. (~~((RCW 70.93.120 levies an annual litter assessment upon))~~) (1) Introduction. Chapter 82.19 RCW imposes a litter tax on manufacturers, wholesalers, and retailers of certain products. (~~((The rate of this special tax is .00015 (.015%) and it applies to sales within this state made on and after May 21, 1971.))~~) Litter tax is imposed independently of the business and occupation (B&O) tax and retail sales and use taxes. RCW 82.19.010. This section provides detailed information about litter tax, including the measure of the tax, the products to which the tax applies, and specific exemptions from the tax.

~~((The tax is to be computed on and paid with the last return for the calendar year. A designated space on this return is to be used for reporting the litter tax.~~

~~The measure of the tax is the gross proceeds of the sales of the business and will apply to places of business on sales of products falling into the thirteen categories listed in RCW 70.93.130 which are defined as follows:~~

~~(1))~~ (2) Tax measure. For manufacturers, the measure of the tax is the value of products listed in subsection (4) of this section, including by-products manufactured in this state. For wholesalers and retailers, the measure of the tax is the gross proceeds of sales within this state of the products listed in subsection (4) of this section. In the case of publishers of newspapers and magazines, the measure of the tax is the gross proceeds of sales, and does not include advertising income.

Litter tax is imposed on subsequent sales of the same goods from the manufacturer to the wholesaler, from the wholesaler to the retailer, and from the retailer to the consumer, if the goods are listed in subsection (4) of this section, and the sales are not specifically exempt by law.

(a) Value of products and gross proceeds of sales. For purposes of the litter tax, "value of products" and "gross proceeds of sales" have the same meanings as defined in RCW 82.04.450 and 82.04.070, respectively. See also WAC 458-20-112 for more information regarding "value of products."

(b) Grocery stores and drugstores. Where it is impractical to separate products that are and are not subject to litter tax, an alternative method is allowed. Persons operating drugstores

may report and pay litter tax measured by fifty percent of total sales in lieu of separately accounting for sales of nondrug drugstore sundry products. (See subsection (4)(n) of this section for information about what constitutes nondrug drugstore sundry products.) Persons operating grocery stores may report and pay the litter tax measured by ninety-five percent of total sales in lieu of separately accounting for grocery and nongrocery products sold. (See subsection (4)(b) of this section for information about what constitutes grocery products.)

(3) **When do I report and pay litter tax?** The frequency of reporting and paying litter tax coincides with the reporting periods of taxpayers for their B&O tax. For example, a wholesaler who reports B&O tax monthly would also report any litter tax liability on the monthly return. For more information on tax reporting frequency, see WAC 458-20-22801 Tax reporting frequency--Forms.

(4) **What products are subject to litter tax?** Litter tax applies to the manufacture or sale of products in the product categories in this subsection, unless a specific exemption applies. Litter tax applies whether these products are sold packaged, unpackaged, or in recyclable containers. See subsection (5) of this section for the litter tax exemptions available for the manufacture or sale of products in these categories.

(a) **Food for human or pet consumption** ~~((means))~~. Food for human or pet consumption is any substance, except drugs, where the chief general use ~~((of which))~~ is for human or pet nourishment, ~~((including))~~ regardless of whether the substance is sold in a consumable form. Food for human or pet consumption includes candy, chewing gum, ~~((and))~~ condiments, packaged or unpackaged meat, bulk foods, shellfish, and ingredients used in processing food for human or pet consumption such as industrial chocolate, grain, barley, or hops. ~~((It))~~ This category includes sales of meals, snacks, lunches, or other food ~~((by))~~ and beverages at restaurants, drive-ins, snack bars, ~~((concessions, and taverns. Drugs means substances or products appearing in the latest listing of United States pharmacopoeia or national formulary the chief general use of which is as medicine for treating disease, healing, or relieving pain, but excluding devices, apparatus, instruments, prostheses and the like))~~ taverns, or by concessionaires.

~~((+2))~~ (b) **Groceries** ~~((means))~~. Groceries are all products ~~((, except drugs,))~~ sold by persons in a place of business selling food for off-premises consumption, but excluding drugs, building materials, clothing, furniture, and appliances.

~~((+3))~~ (c) **Cigarettes and tobacco products.** Cigarettes and tobacco products include all of the products subject to the

excise taxes ~~((of))~~ imposed by chapters 82.24 and 82.26 RCW.

~~((4))~~ (d) Soft drinks and carbonated waters ~~((means all beverages, excluding liquor as defined by Title 66 RCW or rules and regulations of the Washington state liquor control board, but including fruit juices, milk, and all mixtures or dilutions of nonalcoholic beverages))~~. Soft drinks are nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume. Carbonated waters are nonalcoholic beverages, containing carbon dioxide, that do not contain natural or artificial sweeteners.

~~((5))~~ (e) Beer and other malt beverages ~~((means))~~. Beer and other malt beverages are all beverages defined as beer or malt liquor by Title 66 RCW or rules ~~((and regulations))~~ of the Washington state liquor control board.

~~((6))~~ (f) Wine ~~((means))~~. Wine includes all alcoholic beverages defined as wine in Title 66 RCW or rules ~~((and regulations))~~ of the Washington state liquor control board.

~~((7))~~ (g) Newspapers and magazines ~~((means))~~. Newspapers and magazines are all daily and periodical publications, including real estate guides, vehicle trader publications, free community newspapers, and the like.

~~((8))~~ (h) Household paper and paper products ~~((means))~~. Household paper and paper products are materials or substances made into sheets or leaves from natural organic or synthetic fibrous material for home or other personal use. ~~((It))~~ Household paper and paper products include ~~((s also))~~ products or articles made from such sheets or leaves for home or other personal use, such as toilet tissue, paper cups, plates, napkins, cards, wrapping paper, stationery, personal banking checks or deposit slips, computer printer or copier paper, and the like.

~~((9))~~ (i) Glass containers ~~((means))~~. Glass containers are articles made wholly or in substantial part of processed silicates ~~((which))~~ that can be, or are, used to hold other things within themselves. Glass containers include only those containers that are sold with, and that contain, another product or products otherwise subject to litter tax, or containers that are produced so that they can later contain and be sold with another product or products otherwise subject to litter tax. Glass containers do not include containers that are produced to be sold at retail as empty reusable containers, such as drinking glasses, vases, and the like.

~~((10))~~ (j) Metal containers ~~((means))~~. Metal containers are articles made wholly or in substantial part of materials such as iron, steel, tin, aluminum, copper, zinc, lead, silver and any alloys thereof and ~~((which))~~ that can be, or are, used to hold other things within themselves. Metal containers

include only those containers that are sold with, and that contain, another product or products otherwise subject to litter tax, or containers that are produced so that they can later contain and be sold with another product or products otherwise subject to litter tax. Metal containers do not include containers that are produced to be sold at retail as empty reusable containers, such as pots and pans, or metal containers made for transporting other products.

~~((11))~~ (k) **Plastic or fiber containers made of synthetic material** ((means articles which)). Plastic or fiber containers made of synthetic material will be referred to as plastic or fiber containers for purposes of this subsection (4)(k). Plastic or fiber containers are articles that can be, or are, used to hold other things within themselves and ((which)) that are made of synthetically produced ethylene derivatives, resins, waxes, adhesives, or polymers or by synthesis of fiber materials with adhesives, polymers, waxes, resins, or other materials. ~~((11))~~ Plastic or fiber containers include ~~((11))~~ containers made of paper, pasteboard, or cardboard in which the container materials consist ~~((11))~~ of fibrous substances synthesized with other materials. Synthetic material ((means)) is material that is produced by synthesis, which is the process of making or building up by a composition or union of simpler parts or elements as distinguished from the process of extraction or refinement. Plastic or fiber containers include only those containers that are sold with, and that contain, another product or products otherwise subject to litter tax, or containers that are produced so that they can later contain and be sold with another product or products otherwise subject to litter tax. Plastic or fiber containers do not include containers that are produced to be sold at retail as empty reusable containers.

~~((12))~~ (l) **Cleaning agents** ((means)). Cleaning agents are all soaps, detergents, solvents, or other cleansing substances used for cleaning buildings, places, persons, animals, or other things. Cleaning agents include packaged products and products sold in bulk form, as well as products sold in recyclable containers.

(m) **Toiletries** ((means)). Toiletries are all substances such as soap, powder, shampoo, cologne, perfume, cosmetics, toothpaste, ((etc.)) and the like, used in connection with personal dressing or grooming.

~~((13))~~ (n) **Nondrug drugstore sundry products** ((means)). Nondrug drugstore sundry products are all products ~~((, goods, or articles, except drugs,))~~ sold by persons in ~~((a place of))~~ the business of selling drugs, ((but excluding)) except: Drugs, building materials, clothing, furniture, and appliances. For purposes of this section, "drug" has the same meaning as defined in RCW 82.08.0281.

~~(("Place of business" for purposes of this rule means any~~

~~location, department, or division even though it be a part of a larger business operation provided it is separate from such other or additional business physically, operationally, and in its books and records. Thus, a department store which consists of a grocery department and a clothing department, each with its own space and having separate employees, cash registers, and accounting records would not be subject to the groceries litter tax on the sales of its clothing department merely because it was located in the same building and under the same ownership as the grocery department.~~

~~"Gross proceeds of the sales of the business" means the value proceeding or accruing from the sale of tangible personal property and/or for services rendered without any deduction for costs or expenses. In the case of publishers of newspapers and magazines the measure of the litter tax is the same as specified in WAC 458-20-143 for business and occupation tax; i.e., gross income from the publishing business including advertising income.~~

~~The law intends that the tax be limited to sales within this state and therefore there may be deducted from the measure of the tax sales to persons in other states or transfers to points outside the state without sale. Out of state firms making sales in or into Washington will be subject to the litter tax under the principles set out for business and occupation tax in WAC 458-20-193B.~~

~~Persons operating drugstores may report and pay the litter tax measured by 50% of total sales in lieu of separately accounting for sales of drugstore sundry products. Persons operating grocery stores may report and pay the litter tax measured by 95% of total sales in lieu of separately accounting for grocery and nongrocery products sold.)~~ (5) Exemptions. This subsection provides information about products listed under subsection (4) of this section that are exempt from litter tax as provided by RCW 82.19.050:

(a) Products for use and consumption out-of-state. The manufacture or sale of products for use and consumption outside the state;

(b) Agricultural products exempt from B&O tax. The value of products or gross proceeds of the sales by farmers exempt from tax under RCW 82.04.330;

(c) Certain wholesale sales by qualified grocery distribution cooperatives. The sale of products for resale by a qualified grocery distribution cooperative to customer-owners of the grocery distribution cooperative. For the purposes of this section, "qualified grocery distribution cooperative" and "customer-owner" have the meanings given in RCW 82.04.298;

(d) Food or beverages sold for indoor consumption. The sale of food or beverages by retailers that are sold solely for immediate consumption indoors at the seller's place of business

or at a deck or patio at the seller's place of business, or indoors at an eating area that is contiguous to the seller's place of business; or

(e) **Certain retail sales by caterers.** Effective July 24, 2005, the sale of prepared food or beverages by caterers where the food or beverages are to be served for immediate consumption in or on individual nonsingle use containers at premises occupied or controlled by the customer. For the purposes of this section, "prepared food" has the same meaning as provided in RCW 82.08.0293. "Nonsingle use container" and "caterer" have the meanings given in RCW 82.19.050.