



Rule(s) Review Checklist Addendum
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document(s) Reviewed (include title):

- **458-20-159, Consignees, bailees, factors, agents and auctioneers**
- **458-20-160, Agricultural commission agents**

Date last reviewed: **July 22, 1999**

Reviewer: **Gil Brewer**

Date current review completed: **September 30, 2002**

Briefly explain the subject matter of the document(s):

Rule 159 explains the application of the B&O and retail sales taxes to consignees, bailees, factors, agents, and auctioneers, including the bookkeeping requirements of a person claiming to be an agent or broker. Rule 160 explains the reporting responsibilities of agricultural commission agents and the bookkeeping requirements of a person claiming to be an agricultural commission agent.

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs: (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)

YES	NO	
	X	Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
X		Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document



		Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

Information from the following should be incorporated into a revision of Rule 159:

- **ETA No. 386.04.159, Consignee or seller -- incorporate the distinction between a contract of consignment and a contract of sale.**
- **Det. No. 99-005R, 19 WTD 223 (2000) -- describe applicability of trade-in sales tax deduction to consignment sales**

3. Additional information: Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

These rules can be greatly improved by simplifying the language and improving the structure of the rules.

4. Listing of documents reviewed: The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs):

- **ETA 386.04.159, Consignee or seller**



Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Appeals Division Decisions (WTDs):

- **Det. No. 97-228, 17 WTD 170 (1998) -- boat dealer who accepted trade-in boats on consignment sales could not deduct value of trade-in vessels for sales tax purposes (OVERRULED by 19 WTD 223)**
- **Det. No. 98-101, 18 WTD 260 (1999) -- escrow and closing agent for vessel sales is permitted to collect and remit retail sales tax on behalf of dealers under certain conditions**
- **Det. No. 98-192, 18 WTD 295 (1999) -- fruit wholesaler did not operate under principal-agent relationship and is taxable as wholesaler**
- **Det. No. 98-224, 19 WTD 212 (2000) -- taxpayer's sales of software failed to meet requirements of Rule 159 where agreement did not specifically establish agency relationship and taxpayer failed to produce evidence that sales were made in the principal's name**
- **Det. No. 99-005R, 19 WTD 223 (2000) -- trade-in sales tax deduction is available to a consignee seller provided the vehicle traded-in was delivered as consideration for the purchased vehicle (OVERRULES 17 WTD 170)**
- **Det. No. 99-300, 19 WTD 477 (2000) -- importer's commissions were taxable on sales where it did not take title to goods. Documents of sale were necessary as best evidence of the nature of the sale**
- **Det. No. 99-112, 19 WTD 799 (2000) -- "antique mall" operated as agent where contracts clearly established principal/agent relationship and taxpayer's records documented sales and commissions**
- **Det. No. 99-223, 20 WTD 1 (2001) -- commissions of direct seller's representative taxable under service and other activities B&O**
- **Det. No. 00-203, 20 WTD 394 (2001) -- to apply trade-in exclusion to consignment sales: (1) seller or seller's agent must accept ownership of the trade-in property; and (2) seller or seller's agent must reduce the price of the property it sells to the person trading in property, at the time of the sale, to reflect the value of the trade-in**

Attorney General Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):



5. Review Recommendation:

- Amend**
- Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

Communication of the basic information in these rules could be vastly improved by rewriting and restructuring the present rules. The distinction between consignment and sales contracts contained in ETA 386.04.159 should be incorporated into the rule. The rule should also reflect the availability of the trade-in deduction for consignment sales as explained in 19 WTD 223.

As noted in the prior review, the rule should discuss in greater detail when tax will be assessed upon the gross amount of sales or commission income only. If it remains true that the Department is not enforcing the 10-day requirement for bailees, the rules should be revised to reflect that reality. Finally, I agree that Rules 159 & 160 could be combined into a single rule covering agents/consignees generally as well as agricultural commission agents.

6. Manager action: Date: _____

_____ Reviewed and accepted recommendation

Amendment priority:

- _____ 1
- _____ 2
- _____ 3
- _____ 4