



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

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DATE: May 01, 2020

TIME: 2:26 PM

WSR 20-10-068

Agency: Department of Revenue

Original Notice

Supplemental Notice to WSR \_\_\_\_\_

Continuance of WSR \_\_\_\_\_

Preproposal Statement of Inquiry was filed as WSR 20-07-113 ; or

Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW \_\_\_\_\_.

Title of rule and other identifying information: (describe subject) WAC 458-20-141 titled, Duplicating activities and mailing bureaus.

### Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
June 10, 2020	10:00 am	Conference Room 114A 6400 Linderson Way SW Tumwater, Washington 98501	Due to COVID-19 precautions, this meeting may be held telephonically only. The Department will announce if the hearing changes to telephone-only.

Date of intended adoption: 6/16/20 (Note: This is NOT the effective date)

### Submit written comments to:

Name: Leslie Mullin

Address: PO Box 47453, Olympia, WA 98504-7453

Email: LeslieMu@dor.wa.gov

Fax: 360-534-1606

Other:

By (date) \_\_\_\_\_

### Assistance for persons with disabilities:

Contact \_\_\_\_\_

Phone:

Fax:

TTY: 800-833-6384

Email:

Other:

By (date) \_\_\_\_\_

Purpose of the proposal and its anticipated effects, including any changes in existing rules: WAC 458-20-141 is being amended to add information on the taxability and sourcing of direct mail services, update all rule examples, and for overall clarity and readability purposes.

**Reasons supporting proposal:** Businesses that engage in the activities subject to this rule will find the updated rule easier to understand and more informative regarding the taxability and sourcing for these types of activities.

**Statutory authority for adoption:** RCW 82.32.300, RCW 82.01.060(2).

**Statute being implemented:** RCW 82.04.050, RCW 82.32.730.

**Is rule necessary because of a:**

- Federal Law?  Yes  No  
Federal Court Decision?  Yes  No  
State Court Decision?  Yes  No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None

**Name of proponent:** (person or organization) Department of Revenue

- Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Leslie Mullin	6400 Linderson Way SW, Tumwater, WA	360-534-1589
Implementation:	John Ryser	6400 Linderson Way SW, Tumwater, WA	360-534-1605
Enforcement:	John Ryser	6400 Linderson Way SW, Tumwater, WA	360-534-1605

**Is a school district fiscal impact statement required under RCW 28A.305.135?**

- Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

- Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

- No: Please explain: This rule is not a significant legislative rule as defined by RCW 34.05.328.

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_.

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. While the proposed rule draft for WAC 458-20-141 does not meet the exemptions in chapter 34.05 RCW, the amendments do not impose more than minor costs on businesses, as defined in RCW 19.85.020(2), as the amendments do not propose any new requirements not already provided for in statute. Most of the information incorporated into this rule regarding direct mail is described in RCW 82.32.730, so the department used this information, in the context of examples, to explain the taxability and sourcing of direct mail services.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: May 01, 2020

Name: Atif Aziz

Title: Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 05-03-053, filed 1/11/05, effective 7/1/05)

**WAC 458-20-141 Duplicating activities ((and)), mailing bureaus, and direct mail services.** (1) **Introduction.** This rule discusses the business and occupation (B&O) tax and retail sales and use tax reporting responsibilities of persons who engage in duplicating activities, or who provide mailing bureau or direct mail services in Washington. ~~((Persons engaged in printing activities should refer to WAC 458-20-144 (Printing industry).))~~

~~(a) **Other rules to reference.** Persons engaged in duplicating activities or who provide mailing bureau or direct mail services may want to refer to the following rules for additional guidance:~~

~~(i) WAC 458-20-102 Reseller permits;~~

~~(ii) WAC 458-20-113 Ingredients or components, chemicals used in processing new articles for sale;~~

~~(iii) WAC 458-20-136 Manufacturing, processing for hire, fabricating;~~

~~(iv) WAC 458-20-13601 Manufacturers and processors for hire—Sales and use tax exemptions for machinery and equipment;~~

~~(v) WAC 458-20-144 Printing industry;~~

~~(vi) WAC 458-20-15503 Digital products;~~

~~(vii) WAC 458-20-178 Use tax and the use of tangible personal property;~~

~~(viii) WAC 458-20-193 Interstate sales of tangible personal property;~~

~~(ix) WAC 458-20-19301 Multiple activities tax credits; and~~

~~(x) WAC 458-20-243 Litter tax.~~

~~(b) **Examples.** This rule includes examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.~~

(2) **Duplicating activities.**

~~(a) Duplicating is the activity of copying ((of typed, written, drawn, photographed,)) identically from an original for any purpose. The original being duplicated may include previously duplicated((r)) or previously printed materials ((using a photographic process such as photocopying, color copying, or blueprinting)). Duplicating activities do not include:~~

~~(i) Data migration processes for transferring data between storage types, formats, or computer systems; or~~

~~(ii) Nondigital printing methods involving plates, including off-set lithography, flexography, letterpress, gravure, mimeograph, and multigraph.~~

~~((a) **Sales of duplicated products.**)) (b) **Taxability of duplicating activities.** Income from the sale of ((photostats, photocopies, blueprint copies and other duplicated tangible personal property to consumers)) duplicating activities to consumers that are sourced to Washington under RCW 82.32.730 is subject to the retailing B&O tax. ((The measure of tax is)) The retailing B&O tax is based on the gross proceeds of sales. The seller is also responsible for collecting and remitting retail sales tax on the selling price when making sales to consumers, unless a specific exemption applies.~~

The wholesaling B&O tax applies to the gross proceeds of sales when the buyer purchases the duplicated property for resale without

intervening use. The seller must obtain ~~((a resale certificate from the buyer))~~ the required information to document the ~~((wholesale nature of any))~~ sale as provided in WAC 458-20-102 ~~((Resale certificates))~~.

If the seller is also the manufacturer of the duplicated products, ~~((the seller may be eligible for a multiple activities tax credit. Refer to WAC 458-20-19301 (Multiple activities tax credits) for more information about the credit))~~ then refer to (c) of this subsection.

~~((b))~~ (c) Duplicating as a manufacturing activity. A person duplicating tangible personal property for sale or for commercial or industrial use (the use of manufactured property as a consumer) is subject to the manufacturing B&O tax ~~((classification. For further information about manufacturing activities, refer to WAC 458-20-112 (Value of products), WAC 458-20-134 (Commercial or industrial use), and WAC 458-20-136 (Manufacturing, processing for hire, fabricating))~~ in WAC 458-20-136. A manufacturer of duplicated products may also be eligible for the multiple activities tax credit as described in WAC 458-20-19301 if the manufacturer also sells that product.

~~((e))~~ (d) Self-service copying. ~~((Some persons provide consumers with access to duplicating equipment to make their own copies (frequently referred to "self-service copying"). These customers are generally charged on a per page basis. The gross proceeds of sales made to consumers for self-service copying))~~ Self-service copying is the activity of providing a customer access to duplicating equipment to make copies. The business generally charges the customer on a per page basis. The business is subject to the retailing B&O tax on the gross proceeds of sales made to consumers for self-service copying. The seller is also responsible for collecting retail sales tax, unless a specific exemption applies. In such cases, the ((person)) business providing access to duplicating equipment is not engaged in a manufacturing activity ((and charges for)), therefore, the gross proceeds of sales from self-service copying are not subject to the manufacturing B&O tax.

~~((d))~~ (e) Potential litter tax liability. Chapter 82.19 RCW imposes a litter tax on manufacturers ~~((including duplicators)), including businesses engaging in duplicating activities, wholesalers, and retailers of certain products. These products include ((, but are not limited to,)) newspapers, magazines, ((and)) household paper ((and)), paper products, etc. Thus, persons who duplicate tangible personal property for sale or who provide facilities for self-service copying may incur a litter tax liability. ((The measure of the litter tax is the gross proceeds of sale. For further)) Information about the litter tax ((, refer to chapter 82.19 RCW and)) is provided in WAC 458-20-243 ((Litter tax)).~~

~~((e))~~ Purchases for resale. The purchase of tangible personal property for resale as tangible personal property or as a component or ingredient of duplicated property is a purchase at wholesale.) (f) Wholesale purchases. A person who engages in duplicating activities and acquires tangible personal property for resale, without intervening use, or as a component or ingredient of duplicated property, is making a wholesale purchase. Examples of items that may be purchased at wholesale include paper, ink, toner, ((and)) staples, etc. ~~((Refer to))~~ Information about ingredients, components, and chemicals used in the processing of new articles for sale is provided in WAC 458-20-113 ((Ingredients or components, chemicals used in processing new articles for sale)). Wholesale purchases are not subject to retail sales

~~tax when the buyer provides a resale certificate to the seller)). The seller must obtain the required information to document the sale as provided ((by)) in WAC 458-20-102 (~~(Resale certificates)~~)).~~

~~((f))~~ **(g) Purchases subject to retail sales or use tax.** A person who engages in duplicating activities and acquires tangible personal property for use as a consumer must pay retail ~~((sale)) sales tax ((commonly referred to as "deferred sales tax"))~~ or use tax directly to the department when the seller fails to collect retail sales tax. Examples of purchases by a person engaged in duplicating activities that are subject to retail sales tax or use tax include photocopiers for use by customers, cutting boards, office computers, cash registers, and office furniture. ~~((For further))~~ Information about the use tax ~~((, refer to WAC 458-20-178 (Use tax))~~) is provided in WAC 458-20-178.

Persons who engage in the activity of duplicating products for sale should refer to WAC 458-20-13601 ~~((Manufacturers and processors for hire Sales and use tax exemption for machinery and equipment))~~ for information about the retail sales and use tax exemptions for certain machinery and equipment used directly in a manufacturing operation.

~~((g))~~ **Example 1.** Copy Company provides a public area with photocopying equipment and materials (paper, toner, and staples) to allow customers to make their own copies. Copy Company has a separate area where Copy Company employees make copies for customers. The ~~((income))~~ gross proceeds attributable to copies made both by the customers and by Copy Company employees ~~((is))~~ are subject to ~~((the))~~ retailing B&O and retail sales taxes. The value of the copies made by Copy Company employees is also subject to ~~((the))~~ manufacturing B&O tax, and Copy Company may claim a multiple activities tax credit as described ~~((above in subsection (2)(a))~~) in WAC 458-20-19301. Litter tax may also be due as explained ~~((above in subsection (2)(d))~~) in WAC 458-20-243.

Copy Company may purchase ~~((the))~~ paper, toner, and staples that are used or provided in both areas at wholesale, if Copy Company provides the seller ((receives a resale certificate)) with a copy of its reseller permit. Retail sales or use tax applies to the purchase of photocopying equipment in both areas. However, the purchase ((and/or)) or use of the equipment where Copy Company employees make copies may qualify for the machinery and equipment exemption described in WAC 458-20-13601.

(3) **Mailing bureaus ((services)).** Mailing bureaus, also referred to as mail houses, prepare mail pieces for distribution ~~((mail pieces))~~ such as bulletins, form letters, advertising material, political publications, and flyers as directed by their customers. Mailing bureaus may also provide direct mail services, as defined in subsection (4) of this rule. The customer may provide the mail pieces to be prepared for distribution or the mailing bureau itself may sell the material to the customer. Mailing bureaus that duplicate the material being prepared should also refer to subsection (2) ~~((, above))~~ of this rule. Mailing bureaus that print ~~((the))~~ material ~~((being prepared))~~ for their customers should ~~((also))~~ refer to WAC 458-20-144.

(a) **Mailing bureau activities.** Activities conducted by mailing bureaus involve mailing the mail pieces and at least one activity that alters, imprints, or improves tangible personal property of or for the customer. These activities include ~~((, but are not limited to, picking up))~~ addressing, labeling, binding, folding, enclosing, sealing, im-

~~printing, bar coding, tabbing, ((and mailing the mail pieces. The mailing bureau generally charges the customer on a per piece basis for each separate service provided plus the actual cost of any postage.~~

~~Charges for labor and services rendered in respect to altering, imprinting, or improving tangible personal property of or for consumers are retail sales. RCW 82.04.050 (2) (a). Thus, the retailing B&O tax applies to income received from consumers for services that include addressing, labeling, binding, folding, enclosing, sealing, and/or tabbing)) etc.~~

~~(b) **Taxability of mailing bureau activities.** Charges for mailing bureau activities are retail sales and are considered services rendered in respect to altering, imprinting, or improving tangible personal property of or for consumers. RCW 82.04.050. Therefore, income from sales of mailing bureau services that are sourced to Washington, under subsection (4) (c) of this rule or RCW 82.32.730(1), whichever applicable, is subject to the retailing B&O tax. Mailing bureaus ((businesses)) are also responsible for collecting and remitting retail sales tax, which is based on the selling price for these activities, when making sales to ((consumers,)) customers unless a specific exemption applies.~~

~~((b) **Measure of tax.** The measure of the B&O and retail sales taxes is the gross proceeds of sale and selling price, respectively. These terms include all consideration paid by the buyer, however identified, without any deduction for costs of doing business, such as material, labor, and delivery costs. RCW 82.04.070 and 82.08.010.~~

~~(i) **Postage.** Charges for postage or other delivery costs are included in the measure of tax for both B&O tax and retail sales tax if the costs are part of the consideration paid by the customer. It is immaterial if the amounts charged for postage are stated or shown separately on the sales invoice or reflect actual mailing costs to the mailing bureau. Amounts charged for postage and other delivery costs are not included in the measure of tax only if the amounts are not part of the consideration paid by the customer.~~

~~(A) **When is postage part of the consideration paid?** Charges for postage costs are considered part of the consideration paid if the permit to use precancelled stamps, a postage meter, or an imprint account for bulk mailings is in the name of the mailing bureau. The mailing bureau is liable to the post office for payment and the customer's payment of such amounts represents a payment on the sale of tangible personal property or the services provided. For further information, refer to WAC 458-20-111 (Advances and reimbursements).~~

~~(B) **When is postage not part of the consideration paid?** Charges for postage are not considered part of the consideration paid if the permit to use precancelled stamps or a permit imprint account for bulk mailings is in the customer's name. The mailing bureau in these cases has no primary or secondary liability for payment of the postage costs. (Refer to WAC 458-20-111 for information about advances and reimbursements.)~~

~~(ii) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of any situation must be determined after a review of all facts and circumstances. For purposes of the following examples, sales invoices to the customer separately identify charges for postage.~~

~~(A) **Example 1.** Mailing Bureau receives mail pieces from Department Store to prepare and mail. Mailing Bureau advises Department Store of the estimated amount of postage. Department Store deposits an~~

amount equal to the estimated cost of postage in its own permit imprint account. The estimated postage is not part of the total consideration paid because the Department Store is personally liable to the post office for postage. The total charge, excluding postage, is the consideration paid by Department Store and subject to tax.

(B) **Example 2.** Assume facts as described above in Example 1. The post office determines that the actual cost of postage exceeds the estimated amount deposited by Department Store in its permit imprint account. Post office transfers the additional amount for postage from Mailing Bureau's account. Mailing Bureau invoices Department Store for the additional amount. The additional amount for postage is not part of the consideration paid and is not included in the measure of tax because Mailing Bureau's liability for payment of the additional postage is limited to that of an agent.

(C) **Example 3.** Mailing Bureau receives from Political Candidate B mail pieces to prepare and mail. Mailing Bureau uses its own postage meter to apply metered postage. Postage is a part of the consideration paid by Candidate B and is included in the measure of tax.

(D) **Example 4.** Mailing Bureau receives prestamped mail pieces from Medical Clinic to prepare and mail. The mail pieces qualify for the lower bulk mail rates after Mailing Bureau prepares the mail pieces. The post office refunds the difference between the single piece rate and the bulk mail rate to Mailing Bureau. Mailing Bureau retains the amount due for services rendered and in turn remits the balance of the refunded postage to Medical Clinic. Postage is not a part of the consideration paid and is not included in the measure of tax.

(E) **Example 5.** Mailing Bureau prints, prepares, and mails mail pieces for Non-Profit Organization's fund-raising drive. Mailing Bureau applies metered postage using its own postage meter. The charge for postage is a part of the consideration paid and included in the measure of tax.

(F) **Example 6.** Mailing Bureau duplicates, prepares, and mails advertising for Restaurant. Mailing Bureau applies precancelled stamps that it purchases from the post office. The charge for postage is a part of the consideration paid and included in the measure of tax.

(G) **Example 7.** Mailing Bureau picks up mail pieces from Washington City to prepare and mail. Mailing Bureau applies metered postage using its own postage meter. The charge for postage is a part of the consideration paid by Washington City and included in the measure of tax.

(H) **Example 8.** Mailing Bureau prepares and mails advertising for Insurance Company. To apply postage, Mailing Bureau uses a postage meter leased by Insurance Company from a third party vendor. Insurance Company is liable to the third party vendor for payment of postage. The consideration does not include charges for postage.

(I) **Example 9.** Assume same facts as described in Example 8 above. The postage meter account contains insufficient funds required for mailing pieces. Mailing Bureau advances sufficient funds to Insurance Company's metering account. Mailing Bureau invoices Insurance Company for the additional amount. The consideration does not include postage because Mailing Bureau's liability for payment is limited to that of an agent.

(c) **Retail sales tax exemptions.** Certain sales tax exemptions may apply to the sale of tangible personal property or labor and services rendered to tangible personal property.



~~(i) **Interstate sales of tangible personal property.** The sale of tangible personal property is not subject to retail sales tax when the seller agrees to and does deliver the property outside the state. Refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) for further information about interstate sales.~~

~~(ii) **Labor and services rendered in respect to tangible personal property of or for a nonresident.** RCW 82.08.0265 provides a retail sales tax exemption for charges made for labor and services rendered in respect to any installing, repairing, cleaning, altering, or improving tangible personal property of or for a nonresident when the seller agrees to and does deliver the property to the purchaser at a point outside this state or delivers the property to a common or bona fide private carrier consigned to the purchaser at a point outside this state. For further information about this exemption, refer to WAC 458-20-173 (Installing, cleaning, repairing or otherwise altering or improving personal property of consumers).~~

~~(d) **Purchases for resale.** The purchase of tangible personal property for resale as tangible personal property or to become a component or ingredient of property upon which mailing bureau services will be performed is a purchase at wholesale. Examples of items that may be purchased at wholesale include paper, printing ink, envelopes, and staples. Wholesale purchases are not subject to retail sales tax when the buyer provides a resale certificate to the seller as provided by WAC 458-20-102 (Resale certificates). Refer to WAC 458-20-113 (Ingredients or components, chemicals used in processing new articles for sale) for further information regarding ingredients and components.~~

~~(e) **Purchases subject to retail sales or use tax.** A mailing bureau business that purchases, leases, or otherwise acquires tangible personal property for use as a consumer must pay retail sale tax (commonly referred to as "deferred sales tax") or use tax directly to the department when the seller fails to collect the retail sales tax. Examples of such property include photocopiers, cutting boards, computers, office furniture, and equipment to address, label, fold, seal, insert, meter, stamp, or sort. For further information about the use tax, refer to WAC 458-20-178 (Use tax).~~

~~(f) **Purchases of mailing lists.** Persons acquiring mailing lists are purchasing an information service regardless of the medium used to provide or transfer the information. Thus, the purchase of a mailing list by a mailing bureau business is not subject to either retail sales or use tax.)~~

(c) **Delivery charges.** Delivery charges are charges by a seller of personal property or services for preparation and delivery to a location designated by the purchaser. These charges include transportation, shipping, postage, handling, crating, packing, etc. RCW 82.08.010. Delivery charges, such as postage, are included in the selling price unless an exemption applies. Refer to subsection (4) of this rule for a description of the B&O tax deduction and retail sales and use tax exemption available for separately stated delivery charges of direct mail.

**Example 2.** Mailing Bureau Company (MBC), located in Seattle, Washington, provides a service to its customers that entails receiving all of the pieces to be included in a particular mailing and then assembling the pieces by machine so the smaller advertisement flyers and coupons are contained inside the largest folded piece. MBC then mails the advertisements to addresses throughout Washington provided by the customer. Based on these facts, MBC is providing mailing bureau activities because it improves tangible personal property by sorting and

assembling advertising flyers and then mails the advertising flyers. MBC's sales of these mailing bureau services are retail sales sourced to Washington under subsection (4)(c) of this rule. The sales are subject to retail sales tax and MBC's gross proceeds from the sales are subject to B&O tax under the retailing classification.

(d) **Purchases of tangible personal property by a mailing bureau.**

(i) Purchases for resale. The purchase of tangible personal property for resale without intervening use, or to become a component or ingredient of property upon which mailing bureau services will be performed is a purchase at wholesale. Examples of items a mailing bureau might purchase at wholesale include paper, printing ink, envelopes, staples, etc. Wholesale purchases are not subject to retail sales tax when the seller obtains the required information to document the sale as provided in WAC 458-20-102. Information about ingredients, components, and chemicals used in processing new articles for sale is provided in WAC 458-20-113.

(ii) Purchases subject to retail sales or use tax. A mailing bureau business that purchases, leases, or otherwise acquires tangible personal property for use as a consumer must pay retail sales tax or use tax directly to the department when the seller fails to collect the retail sales tax. Examples of such property include photocopiers, cutting boards, computers, office furniture, equipment to address, label, fold, seal, insert, meter, stamp, or sort, etc. Information about the use tax is provided in WAC 458-20-178.

(4) **Direct mail.**

(a) "**Direct mail**" means printed material delivered or distributed by U.S. mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. Direct mail includes tangible personal property supplied directly or indirectly by the purchaser to a direct mail seller, such as a mailing bureau, for inclusion in the package containing the printed material. Direct mail does not include multiple items of the same printed material delivered to a single address. RCW 82.32.730(9). The two types of "direct mail" are "advertising and promotional direct mail" and "other direct mail," which are defined as follows:

(i) "Advertising and promotional direct mail" means printed material that meets the definition of "direct mail," and of which the primary purpose is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization.

(ii) "Other direct mail" means any "direct mail" that is not considered "advertising and promotional direct mail" regardless of whether advertising and promotional direct mail is included in the same mailing, but does not include the development of billing information or the provision of any data processing services that is more than incidental. The term "other direct mail" includes, but is not limited to:

(A) Transactional direct mail that contains personal information specific to the addressee such as invoices, bills, and statements of account;

(B) Any legally required mailing including privacy notices, tax reports, and stockholder reports; and

(C) Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents, such as newsletters and informational pieces.

(b) **Taxability of direct mail activities.**

(i) Retail sales. Sales of direct mail services sourced to Washington are retail sales and subject to the retailing B&O tax and the retail sales tax, unless the sale is exempted by law. RCW 82.32.730 and subsection (4)(c) of this rule explain how to determine where a sale of direct mail is sourced.

(ii) B&O tax deduction. Direct mail delivery charges may be deducted from the measure of B&O tax if the delivery charge is separately stated on the invoice. If the delivery charge is not separately stated on the invoice, it is considered part of the measure of tax and subject to the retailing B&O tax. RCW 82.04.4272.

(iii) Sales and use tax exemption. Sales and use taxes do not apply to delivery charges for the delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser. RCW 82.08.807; RCW 82.12.807.

**Example 3.** Bar Coding Services, Inc. (BCS) is located in Washington and provides a bar coding service for businesses that desire automated postage rates that are lower than standard rates. BCS's customer, Department Store, delivers direct mail to BCS for service, processing, and delivery. BCS adds the appropriate postage using its own postage account equaling \$120 and separately invoices this cost. BCS also charges a service fee of \$600. BCS then delivers the letters to the U.S. postal service. BCS's service fee of \$600 invoiced to Department Store is subject to retailing B&O tax and retail sales tax. The separately invoiced postage charge of \$120 is deductible from both the B&O tax and retail sales tax because of the direct mail delivery deduction in RCW 82.04.4272 and exemptions from retail sales and use tax in RCW 82.08.807 and 82.12.807.

(c) **Sourcing sales of direct mail - "Advertising and promotional direct mail" versus "other direct mail."**

(i) Intrastate direct mail - Direct mail delivered from and to locations within Washington. Intrastate direct mail, whether "advertising and promotional direct mail" or "other direct mail" delivered to a location in Washington is subject to retailing B&O tax and retail sales tax, and the sales are sourced one of two ways:

(A) If the purchaser provides the seller with a direct pay permit, a streamlined sales and use tax agreement (SSUTA) exemption certificate claiming direct mail, or other written statement approved, authorized, or accepted by the department, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any taxes to which the direct pay permit, SSUTA exemption certificate, or statement applies. The purchaser must source the sale to the jurisdictions to which the direct mail is to be delivered and must pay and report any applicable tax due.

(B) If the purchaser does not meet (c)(i)(A) of this subsection, the sale of intrastate direct mail is sourced to the location from which the direct mail was shipped. However, if the seller knows that a portion of the sale will be delivered or distributed to locations in another state, the seller must collect tax on that portion pursuant to RCW 82.32.730 (6)(c)(ii). RCW 82.32.730 (6)(c)(i) and (ii). In the case of intrastate sales of advertising and promotional direct mail services, the seller may instead elect to source the sales pursuant to (c)(ii)(A)(II) of this subsection; i.e., according to the delivering

information provided by the purchaser. RCW 82.32.730 (6) (c) (iii) and (5) (a) (iii).

(ii) Interstate direct mail - Direct mail delivered from Washington to locations outside of Washington or delivered to Washington from locations outside of Washington. Interstate sales of "advertising and promotional direct mail" or "other direct mail" are sourced as follows:

(A) For "advertising and promotional direct mail," if the purchaser:

(I) Provides the seller with either a direct pay permit or SSUTA exemption certificate claiming direct mail, or other written statement approved, authorized, or accepted by the department, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any taxes to which the direct pay permit, SSUTA exemption certificate, or other written statement approved, authorized, or accepted by the department applies. RCW 82.32.730 (5) (a) (ii). The purchaser must source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered and must pay and report any applicable tax due;

(II) Provides the seller with information showing the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients, the seller must source the sale to the jurisdictions to which the direct mail is to be delivered and must collect and remit the applicable tax. RCW 82.32.730 (5) (a) (iii). In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of advertising and promotional direct mail where the seller has sourced the sale according to the delivery information provided by the purchaser;

(III) Does not provide the seller with any of the information in (A) (I) or (II) of this subsection, the sale must be sourced to the location from which the advertising and promotional direct mail was shipped. RCW 82.32.730 (5) (a) (iv).

(B) For "other direct mail," if the purchaser:

(I) Provides the seller with either a direct pay permit or SSUTA exemption certificate claiming direct mail, or other written statement approved, authorized, or accepted by the department, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any taxes to which the direct pay permit, SSUTA exemption certificate, or approved statement applies. RCW 82.32.730 (5) (b) (iii). The purchaser must source the sale to the jurisdictions to which the other direct mail is to be delivered, and the purchaser must report and pay any applicable tax due;

(II) Does not provide the seller with any of the information in (A) (I) of this subsection, the sale must be sourced to the address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of business. RCW 82.32.730 (1) (c) and (5) (b) (i).

**Example 4.** Washington Grocery Store (WGS) hires Out-of-State Mailing Bureau (OSMB), which has substantial nexus with Washington, to alter, imprint, improve, and deliver advertising and promotional direct mail consisting of brochures and discount coupons to its customers in Washington. WGS provides OSMB with a mailing address list containing jurisdictional information for its customers. OSMB sends an invoice to WGS charging a service fee of \$1,200 and a separately stated postage charge of \$200. Under these facts, OSMB has made a retail sale that is sourced to Washington in accordance with (c) (ii) (A) of subsection (4) because: (1) The activity involves an interstate sale

of "advertising and promotional" direct mail; (2) WGS did not provide OSMB with a direct pay permit or SSUTA exemption certificate, but did provide a mailing address list containing jurisdictional information for its customers; and (3) The advertising and promotional direct mailings are to be delivered to WGS's customers in Washington.

OSMB must collect from WGS and remit to the department the retail sales tax based on the delivery location of the mailings. The postage charge of \$200 is a separately stated direct delivery charge that is exempt from the retail sales tax. OSMB also owes retailing B&O tax on the gross proceeds of the sale. However, the postage charge is deductible from the measure of B&O tax.

**Example 5.** Out-of-State Bank (OSB) is located in Portland, Oregon. OSB hires Quick Statement Printers (QSP), located in Vancouver, Washington, to mail bank statements to its customers. OSB does not provide QSP with a direct pay permit or SSUTA exemption certificate, but QSP has the Oregon business address of OSB in its business records. OSB sends a mailing address list containing its customers' jurisdictional information to QSP. QSP invoices OSB a service fee of \$1,500 and separately stated postage of \$200. Under these facts, the retail sale is sourced to Oregon in accordance with (c)(ii)(B) of subsection (4) because: (1) The activity involves an interstate sale of "other direct mail;" (2) OSB did not provide QSP with a direct pay permit or SSUTA exemption certificate; and (3) OSB's Oregon address is available from QSP's business records.

Washington retail sales tax and retailing B&O tax is not owed on this sale because the sale is sourced outside of Washington based on OSB's address.

**Example 6.** A printer produces 1,000 copies of a form letter, each personalized with customer information. Under the contract, the printer is required to shrink-wrap the pallet and release the statements to the custody of a third-party mailing service provider selected by the purchaser. The purchaser has contracted separately with the mailing service provider to fold, insert the form letters into envelopes, and mail them. This printed material is not "direct mail" because the seller/printer is not delivering or distributing the printed material to a mass audience or to addressees on a mailing list at the direction of the purchaser.

(5) **Purchases of mailing lists.** Persons purchasing mailing lists that are transferred electronically are purchasing a digital product that is subject to retail sales or use tax unless purchased for resale, without intervening use, or if some other exemption applies. Information about the sale and use of digital products and how to determine tax liability for digital products is provided in WAC 458-20-15503.