



# RULE-MAKING ORDER

**CR-103P (May 2009)**  
**(Implements RCW 34.05.360)**

**Agency:** Department of Revenue

**Permanent Rule Only**

**Effective date of rule:**

**Permanent Rules**

31 days after filing.

Other (specify) ( If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

Yes  No If Yes, explain:

**Purpose:** WAC 458-20-189 Sales to and by the state of Washington and municipal corporations, including counties, cities, towns, school districts, and fire districts.

WAC 458-20-189 was amended to:

- Incorporate legislative changes from HB 1550, 2015 Regular Session, (Chapter 169, Laws of 2015);
- Update existing definitions and include a new definition for the term “user fee”;
- Add subsection titles for readability purposes;
- Remove outdated examples and add a new example of an enterprise activity;
- Update statutory and rule references.

**Citation of existing rules affected by this order:**

Amended: WAC 458-20-189 Sales to and by the state of Washington and municipal corporations, including counties, cities, towns, school districts, and fire districts.

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

**Other authority :**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 17-03-083 on January 12, 2017.

Describe any changes other than editing from proposed to adopted version:

**None.**

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available.

**An analysis was not prepared.**

**Date adopted:**

April 3, 2017

**NAME**

Kevin Dixon

**SIGNATURE**

**TITLE**

Rules Coordinator

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: April 03, 2017**

**TIME: 3:34 PM**

**WSR 17-08-076**

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	Amended		Repealed
<b>Federal rules or standards:</b>	New	Amended		Repealed
<b>Recently enacted state statutes:</b>	New	Amended	1	Repealed

**The number of sections adopted at the request of a nongovernmental entity:**

	New	Amended		Repealed
--	-----	---------	--	----------

**The number of sections adopted in the agency's own initiative:**

	New	Amended	1	Repealed
--	-----	---------	---	----------

**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

	New	Amended		Repealed
--	-----	---------	--	----------

**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	Amended		Repealed
<b>Pilot rule making:</b>	New	Amended		Repealed
<b>Other alternative rule making:</b>	New	Amended		Repealed

AMENDATORY SECTION (Amending WSR 10-06-070, filed 2/25/10, effective 3/28/10)

**WAC 458-20-189 Sales to and by the state of Washington((,)) and municipal corporations, including counties, cities, towns, school districts, and fire districts.** (1) **Introduction.** This ((section)) rule discusses the business and occupation (B&O), retail sales, use, and public utility tax applications to sales made to and by the state of Washington and municipal corporations including, but not limited to, counties, cities, towns, school districts, ((and)) fire districts, and other special districts. ((Hospitals or similar institutions operated by the state of Washington, or a municipal corporation thereof, should refer to WAC 458-20-168 (Hospitals, nursing homes, boarding homes, adult family homes and similar health care facilities). School districts should also refer to WAC 458-20-167 (Educational institutions, school districts, student organizations, and private schools). Persons providing physical fitness activities and amusement and recreation activities should also refer to WAC 458-20-183 (Amusement, recreation, and physical fitness services).))

Persons providing public utility services may also want to refer to the following sections:

(a) WAC 458-20-179 (Public utility tax);

(b) WAC 458-20-180 (Motor transportation, urban transportation);

(c) WAC 458-20-250 (Solid waste collection tax); and

(d) WAC 458-20-251 (Sewerage collection and other related activities).))

(a) **Other rules that may apply.** Readers may also want to refer to other rules for additional information, including the following:

(i) WAC 458-20-106 Casual or isolated sales—Business reorganizations.

(ii) WAC 458-20-118 Sale or rental of real estate, license to use real estate.

(iii) WAC 458-20-167 Educational institutions, school districts, student organizations, and private schools.

(iv) WAC 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities.

(v) WAC 458-20-179 Public utility tax.

(vi) WAC 458-20-180 Motor carriers.

(vii) WAC 458-20-201 Interdepartmental charges.

(viii) WAC 458-20-250 Solid waste collection tax.

(ix) WAC 458-20-251 Sewerage collection and other related activities.

(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) **Definitions.** For the purposes of this ((section)) rule, the following definitions apply:

(a) **"Enterprise activity"** means an activity financed and operated in a manner similar to a private business enterprise. The term includes those activities which are generally in competition with private business enterprises and which are over fifty percent funded by user fees. The term does not include activities which are exclusively governmental.

(b) "Municipal corporations" means counties, cities, towns, school districts, ~~((and))~~ fire districts, and other special districts including, but not limited to, park and recreation districts, water and sewer districts, and library districts of the state of Washington.

~~((b))~~ (c) "Public service business" means any business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, irrespective of whether the business has the powers of eminent domain or the state exercises its control over the business. It includes, ~~((among others and without limiting the scope hereof))~~ but is not limited to, water distribution, light and power, public transportation, and sewer collection.

~~((e))~~ (d) "Subject to control by the state," as used in ~~((b))~~ (c) of this subsection, means control by the utilities and transportation commission or any other state department required by law to ~~((exercise control of))~~ regulate a business of a public service nature as to rates charged or services rendered.

~~((d) "Enterprise activity" means an activity financed and operated in a manner similar to a private business enterprise. The term includes those activities which are generally in competition with private business enterprises and which are over fifty percent funded by user fees. The term does not include activities which are exclusively governmental.)~~ (e) "User fee" as used in this rule, means a charge imposed on individuals or entities to access facilities, receive services, or participate in activities.

(3) ((Persons taxable under)) Application of the business and occupation tax.

(a) Sales to the state of Washington and municipal corporations. Sellers are subject to the B&O tax ~~((upon))~~ on sales to the state of Washington, its departments and institutions, or to municipal corporations ~~((of the state)).~~

(b) Sales by the state of Washington. The state of Washington~~((,))~~ and its departments and institutions~~((, as distinct from its corporate agencies or instrumentalities,))~~ are not subject to the provisions of the B&O tax~~((,))~~ under RCW 82.04.030.

(c) Sales by municipal corporations.

(i) Governmental activities. Municipal corporations are not subject to the B&O tax ~~((upon))~~ on amounts ~~((derived))~~ received from activities ~~((which))~~ that are exclusively governmental~~((,))~~ under RCW 82.04.419. ~~((Thus, the B&O tax does not apply to))~~ Income from activities that are exclusively governmental include, but are not limited to, license and permit fees((,)); inspection fees((,)); fees for copies of public records, reports, and studies((,)); pet adoption and license fees((,)); processing fees ((involving)) for fingerprinting and environmental impact statements((, and)); and fees for on-street metered parking and on-street parking permits. Income received from taxes, fines, ((or)) penalties, and interest ((thereon. Also exempt are fees for on-street metered parking and on-street parking permits.)) imposed on exclusively governmental activities is also exempt from the B&O tax.

(ii) Interdepartmental charges. Charges between departments of a particular municipal corporation are interdepartmental charges and are not subject to the B&O tax.

(iii) Grant income. Municipal corporations are ~~((also))~~ exempt from the B&O tax on grants received from the state of Washington, or the United States government~~((,))~~ under RCW 82.04.418.

~~((d))~~ (iv) Public service business activities. Municipal corporations engaging in public service business activities should refer to the rules mentioned in subsection (1)(a) of this rule to determine their B&O tax liability.

(v) Enterprise activities. Municipal corporations ~~((deriving))~~ receiving income, however designated, from any enterprise ~~((or public service business))~~ activity for which a specific charge is made are subject to the ~~((provisions of the B&O or public utility tax. Charges between departments of a particular municipal corporation are interdepartmental charges and not subject to tax. (See also WAC 458-20-201 on interdepartmental charges.))~~

~~(i))~~ B&O tax.

(A) When determining whether an activity is an enterprise activity, user fees ~~((derived))~~ received from the activity must be measured against total costs attributable to providing the activity, including direct and indirect overhead. This review should be performed at the budget level for all activities included in the budget, and on the fiscal or calendar year basis used by the entity in maintaining its books of account.

~~((For example,))~~ Example 1. A city ~~((operating an athletic and recreational facility))~~ determines that ~~((the facility))~~ its community center, which is operated under a single budget, generated two hundred fifty thousand dollars in user fees for the fiscal year. The total cost ~~((s for operating))~~ to operate the facility ~~((were))~~ was four hundred thousand dollars ~~((. This figure)),~~ which includes direct operating costs ~~((and)),~~ direct and indirect overhead, ~~((including))~~ asset depreciation, and interest payments for the retirement of bonds issued to fund the facility's construction. The principal payments for the retirement of the bonds are not included because these costs are a part of the asset depreciation costs. The facility's operation is an enterprise activity because it is more than fifty percent (\$250,000/\$400,000 = 63%) funded by user fees.

~~((ii))~~ (B) An enterprise activity ~~((which))~~ that is operated as ~~((a))~~ part of a governmental or nonenterprise activity is subject to the B&O tax. ~~((For example, City operates Community Center, a large athletic and recreational facility,))~~

Example 2. A city owns a large community center and three smaller neighborhood centers. The community center operates with its own budget, and the three neighborhood centers ~~((are lumped together and operated))~~ operate under a single separate budget. The community center and the neighborhood centers are operated as a part of ~~((an))~~ the overall parks and recreation ~~((system))~~ department, which is not more than fifty percent funded by user fees.

Each budget must be independently reviewed to determine whether these facilities are operated as enterprise activities. The operation of the community center ~~((would be))~~ is an enterprise activity only if the user fees account for more than fifty percent of the community center's operating budget. The total user fees generated by the three neighborhood centers ~~((would be))~~ are compared to the total costs of operating the three centers to determine whether they, as a whole, ~~((were operated as))~~ are an enterprise activity. Had each neighborhood center operated under ~~((an))~~ individual budgets, the user fees generated by each neighborhood center would ~~((have been))~~ be compared to the costs of operating that center.

(4) Business and occupation tax classifications for enterprise activities.

~~(a) ((Municipal corporations engaging in public service business activities should refer to the sections of chapter 458-20 WAC mentioned in subsection (1)(a) through (d) of this section to determine their B&O tax liability.))~~ Municipal corporations engaging in enterprise activities are subject to the B&O tax as follows:

(i) **Service and other ((business)) activities tax.** Amounts ~~((derived))~~ received from, but not limited to, ~~((special))~~ event admission fees for concerts and exhibits, ~~((user))~~ admission charges to a zoo or wildlife park, fees charged for the use of lockers ((and checkrooms)) at a facility not considered an "athletic or fitness facility" as defined in RCW 82.04.050, charges for moorage (less than thirty days), and the granting of a license to use real property are subject to the service and other ~~((business))~~ activities B&O tax ~~((if these activities are considered enterprise activities. (See also WAC 458-20-118 on the sale or rental of real estate.))~~ The service tax applies to fees charged for instruction in amusement and recreation activities, such as tennis or swimming lessons.

Physical fitness activities are retail sales. These activities include weight lifting, exercise facilities, aerobic classes, etc. ~~(See also WAC 458-20-183 on amusement and recreation activities, etc.))~~ under RCW 82.04.290(2).

(ii) **Extracting tax.** The extracting of natural products for sale or for commercial use is subject to the extracting B&O tax under RCW 82.04.230. The measure of tax is the value of products. (See WAC 458-20-135 on extracting.) Counties and cities are not, however, subject to the extracting B&O tax ~~((upon))~~ on the cost of labor and services performed in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, or rock taken from a pit or quarry owned by or leased to the county or city when these products are either stockpiled for placement or are placed on a street, road, place, or highway of the county or city by the county or city itself. ~~((Nor does))~~ In addition, the extracting B&O tax does not apply to the cost of or charges for such labor and services if the sand, gravel, or rock is sold by the county or city to another county or city at actual cost for placement on a publicly owned street, road, place, or highway ~~((-))~~ under RCW 82.04.415.

(iii) **Manufacturing tax.** The manufacturing of products for sale or for commercial use is subject to the manufacturing B&O tax under RCW 82.04.240. The measure of tax is the value of products. (See WAC 458-20-136 on manufacturing.) The manufacturing B&O tax does not apply to the value of materials printed by counties, cities, towns, ~~((or))~~ school districts, educational districts, or library or library district facilities solely for their own use ~~((- RCW 82.04.397))~~ under RCW 82.04.600.

(iv) **Wholesaling tax.** The wholesaling B&O tax applies to the gross proceeds ~~((derived))~~ received from sales or rentals of tangible personal property to persons who resell the same without intervening use under RCW 82.04.270. The wholesaling tax does not, however, apply to casual sales. ~~((See WAC 458-20-106 on casual sales.))~~ Sellers must obtain ~~((resale certificates for sales made before January 1, 2010, or))~~ a reseller permit ~~((s for sales made on or after January 1, 2010,))~~ from their customer ~~((s))~~ to document the wholesale nature of any sale as provided in ~~((WAC 458-20-102A (Resale certificates) and))~~ WAC 458-20-102 (Reseller permits). ~~((Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.))~~

(v) **Retailing tax.** Amounts received from, but not limited to, user fees for off-street parking and garages, ((and)) charges for the sale or rental of tangible personal property to consumers, fees for providing recreational services and activities, charges for operating an athletic or fitness facility, and other retail services and activities as provided in RCW 82.04.050, are taxable under the retailing B&O tax under RCW 82.04.250. The retailing B&O tax does not, however, apply to casual sales. ~~((See WAC 458-20-106.))~~ Fees for amusement and recreation activities, such as golf, swimming, racquetball, and tennis, are retail sales and subject to the retailing tax if the activities are considered enterprise activities. Charges for instruction in amusement and recreation activities are subject to the service tax. ~~(See also WAC 458-20-183 and (a)(i) of this subsection.)~~

Charges for physical fitness and sauna services are classified as retail sales and subject to the retailing tax. While a retail sales tax exemption for physical fitness classes provided by local governments is available (see subsection (6)(h) of this section), the retailing B&O tax continues to apply.)

(b) Persons selling products ~~((which))~~ that they have extracted or manufactured must report, unless exempt by law, under both the "production" (extracting and/or manufacturing) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a tax credit under the multiple activities tax credit system. ~~((+))~~ See WAC 458-20-19301 on multiple activities tax credits. ~~((+))~~

(5) **Application of the retail sales tax.**

(a) **Sales to the state of Washington and municipal corporations.** The retail sales tax ~~((generally))~~ applies to ~~((all))~~ retail sales made to the state of Washington, including its departments and institutions, and to municipal corporations ~~((of the state))~~ unless a specific exemption applies.

(b) **Sales by the state of Washington and municipal corporations.** The state of Washington, including its departments and institutions, and all municipal corporations ~~((are required to))~~ must collect retail sales tax on all retail sales of tangible personal property or ~~((services classified as))~~ retail services unless a specific exemption ~~((s apply))~~ applies. Retail sales tax must be collected and remitted even ~~((though))~~ if the sale ~~((may be))~~ is exempt from the retailing B&O tax. ~~((For example,))~~

**Example 3.** A city police department must collect retail sales tax on casual sales of unclaimed property to consumers, even though this activity is not subject to the B&O tax because these sales are considered casual sales. ~~((See also WAC 458-20-106.))~~

**Example 4.** A city owns and operates a zoo. One budget is maintained for the care and maintenance of the wildlife and facilities, and a separate budget is maintained for the gift shop and concessions. The wildlife and facilities budget is less than fifty percent funded by admission fees, while the gift shop and concessions budget is almost entirely funded by the proceeds from sales. The admission fees are not subject to the B&O tax, but the income from the gift shop and concession sales are subject to the retailing B&O tax and the city must collect retail sales tax. In this example, had the entire zoo been operated under a single budget and less than fifty percent of the budget was funded by user fees, then no part of the zoo would be considered an enterprise activity. If the zoo is not an enterprise activity, then B&O tax would not apply to the admission fees, the gift shop sales, or the concession sales. However, retail sales tax must still be collected on the gift shop and concession sales.

(c) Sales between the state of Washington and a municipal corporation. Sales between a department or institution of the state and a municipal corporation (~~(, or between municipal corporations)~~) are retail sales and are subject to the retail sales tax. (~~(For example,)~~)

Example 5. State Agency sells office (~~(supplies)~~) equipment to County. State Agency is making a retail sale (~~(State Agency)~~) and must collect and remit retail sales tax upon the amount charged, even though the B&O tax does not apply to this sale. The amount of retail sales tax must be separately itemized on the sales invoice (~~(-)~~) under RCW 82.08.050. State Agency may claim a tax paid at source deduction for any retail sales or use tax previously paid on the (~~(acquisition)~~) purchase of the office (~~(supplies)~~) equipment provided there was no intervening use of the office equipment by State Agency. If intervening use occurred, State Agency may not claim the tax paid at source deduction, as described in WAC 458-20-102 (Reseller permits), for any retail sales or use tax it previously paid when purchasing the office equipment.

(d) Sales between municipal corporations. Sales between municipal corporations are retail sales subject to the retail sales tax.

(e) Sales between departments or institutions of the state of Washington. Departments or institutions of the state of Washington are not considered sellers when making sales to other departments or institutions of the state because the state is considered to be a single entity (~~(-)~~) under RCW 82.08.010(2). Therefore, the "selling" department or institution is not required (~~(by statute)~~) to collect the retail sales tax on these sales.

All departments or institutions of the state of Washington are, however, considered "consumers (~~(-)~~)" under RCW 82.08.010(3). A department or institution of the state purchasing tangible personal property from another department or institution is required to remit to the department of revenue the retail sales or use tax upon that purchase, unless it can document that the "selling" institution previously paid (~~(the appropriate)~~) retail sales or use tax on that item.

(6) Retail sales tax exemptions. The retail sales tax does not apply to the following:

(a) Sales to city or county housing authorities (~~(which were)~~) created under the provisions of the Washington housing authorities law, chapter 35.82 RCW. However, prime contractors and subcontractors working for city or county housing authorities should refer to WAC 458-20-17001 (Government contracting—Construction, installations, or improvements to government real property) to determine their tax liability.

(b) Charges to the state of Washington and municipal corporations (~~(and the state of Washington)~~) for that portion of the selling price of contracts for watershed protection or flood control which is reimbursed by the United States government according to the provisions of the Watershed Protection and Flood Prevention Act, Public Law 566, as amended (~~(-)~~), under RCW 82.08.0271.

(c) Sales of (~~(the)~~) an entire or complete integral section of operating property of a publicly or privately owned public utility (~~(- or of a complete operating integral section thereof,)~~) to the state of Washington or to a municipal corporation (~~(thereof)~~) for use in conducting any public service business, except a tugboat business (~~(-)~~), under RCW 82.08.0256.

(d) Sales of or charges made for labor and services in the mining, sorting, crushing, screening, washing, hauling, and stockpiling

of sand, gravel, or rock taken from a pit or quarry owned or leased to a county or city, when the materials are either stockpiled in the pit or quarry, placed on the public road by the county or city itself, or sold at cost to another county or city for use on public roads~~((~~-~~))~~ under RCW 82.08.0275.

(e) Sales to one municipal corporation by another municipal corporation directly or indirectly arising out of, or resulting from, the annexation or incorporation of any part of the territory of one municipal corporation by another~~((~~-~~))~~ under RCW 82.08.0278.

(f) Sales to the state of Washington~~((~~-~~))~~ or a municipal corporation ~~((~~in the state~~))~~ of ferry vessels and component parts thereof, and charges for labor and services in respect to construction or improvement of such vessels~~((~~-~~))~~ under RCW 82.08.0285.

(g) Sales to the United States. ~~((~~However~~))~~ Sales to federal employees, however, are subject to the retail sales tax~~((~~-~~))~~ even if the federal employee will be reimbursed for the cost by the federal government. (See WAC 458-20-190 on sales to the United States.)

(h) Charges for physical fitness classes, such as aerobics classes, provided by local governments~~((~~-~~))~~ under RCW 82.08.0291. ~~((~~Local governments must collect retail sales tax on charges for other physical fitness activities such as weight lifting, exercise equipment, and running tracks.~~))~~

~~This exemption does not apply if a person other than a local government provides the physical fitness class, even if the class is conducted at a local government facility.~~ For more information on charges for physical fitness classes provided by local governments, refer to the department's web site at dor.wa.gov.

~~(7) ((~~Deferred sales or~~))~~ **Application of the use tax.**

(a) ~~((~~If the seller fails to collect the appropriate retail sales tax~~))~~ The state of Washington, including its departments and institutions, and ~~((~~all~~))~~ municipal corporations are required to pay the ~~((~~deferred sales or~~))~~ use tax directly to the department of revenue if the retail sales tax was not paid on the value of the item or service at the time of purchase. Refer to WAC 458-20-178 (Use tax and the use of tangible personal property) for more information.

(b) Purchases of cigarette stamps, vehicle license plates, license plate tabs, disability decals, or other items to evidence payment of a license, tax, or fee are purchases for consumption by the state or municipal corporation~~((~~-~~))~~ and subject to the retail sales or use tax.

(c) ~~((~~Where tangible personal property or taxable services are purchased by~~))~~ If the state of Washington~~((~~-~~))~~ or its departments and institutions~~((~~-~~ for the purpose of resale))~~ purchase tangible personal property or retail services to resell to any other department or institution of the state of Washington, or ~~((~~for the purpose of consuming the property purchased~~))~~ to consume as an ingredient or component part in manufacturing or producing for use ~~((~~or~~))~~, a new article for resale to any other department or institution of the state of Washington ((a new article of which such property is an ingredient or component part)), the transaction is ((deemed)) a retail purchase ((at retail)) and ((the)) subject to retail sales or use tax ((applies)).

(d) ~~((~~Persons producing or manufacturing~~))~~ The state of Washington or a municipal corporation that produces or manufactures products for commercial or industrial use are required to remit use tax upon the value of those products under RCW 82.12.020, unless a specific use tax exemption applies. ((~~RCW 82.12.020.~~)) This value must correspond as nearly as possible to the gross proceeds from retail sales of simi-

lar products. (See WAC 458-20-112 and 458-20-134 on value of products and commercial or industrial use, respectively.)

~~((For example,))~~ **Example 6.** A municipal corporation ~~((operating))~~ that operates a print shop and ~~((producing))~~ produces forms or other documents for its own use must remit use tax upon the value of those products, even though a B&O tax exemption is provided by RCW ~~((82.04.397. The municipal corporation may claim a credit for))~~ 82.04.600. The value of the products subject to use tax may be reduced by any retail sales tax previously paid on materials, such as paper or ink, which are incorporated into the manufactured product. ((The process of putting an internal communication, such as a memorandum to employees, on a blank form or document is not considered a manufacturing activity, even when multiple copies of the resulting internal communication are reproduced for wide distribution to employees.))

(i) Counties and cities are not subject to use tax ~~((upon))~~ on the cost of labor and services in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and rock taken from a pit or quarry owned or leased to a county or city when the materials are for use on public roads~~((.))~~ under RCW 82.12.0269.

(ii) If a department or institution of the state of Washington manufactures or produces tangible personal property for use or resale to any other department or institution of the state, use tax must be remitted ~~((upon))~~ on the value of that article even though the state is not subject to the B&O tax.

~~((For example,))~~ **Example 7.** State Agency manufactures office furniture ~~((for resale))~~ to resell to other departments or institutions of the state of Washington. State Agency ~~((will also on occasion use))~~ sometimes uses office furniture it has manufactured for its own offices. Use tax is due on the office furniture sold to the other departments or institutions ~~((of this state)),~~ and on the office furniture State Agency puts to its own use. The taxable value of the office furniture sold to the other departments or institutions ~~((of this state))~~ is the selling price. The taxable value for the office furniture State Agency puts to its own use is the selling price at which State Agency sells comparable furniture to other departments or institutions ~~((of the state)).~~ When computing and remitting use tax upon the value of manufactured furniture, State Agency may ~~((claim a credit for))~~ reduce the value by any retail sales or use taxes it previously remitted on materials incorporated into that furniture. A department or institution ~~((of this state))~~ purchasing office furniture from State Agency must remit use tax ~~((upon))~~ on the value of that furniture, unless it can document that State Agency paid use tax upon the appropriate value of the furniture. (See also subsection (5)~~((+d))~~ (e) of this ~~((section))~~ rule.)

(e) A use tax exemption ~~((is available to state or local governmental entities using tangible personal property donated to them.))~~ applies to the use by the state or local governments of donated personal property under RCW 82.12.02595. The donor, however, remains liable for the retail sales or use tax on the donated property~~((, even though the state or local governmental entity's use of the property is exempt of tax)).~~

(8) ~~((Persons subject to))~~ **Application of the public utility tax.**

(a) Persons ~~((deriving))~~ receiving income subject to the ~~((provisions of the))~~ public utility tax may not claim a deduction for amounts received as compensation for services rendered to the state of Washington, its departments and institutions, or to municipal corporations thereof.

(b) The public utility tax does not apply to income received by the state of Washington((7)) or its departments and institutions from providing public utility services.

(c) Municipal corporations operating public service businesses should refer to ((WAC 458-20-179 (Public utility tax), WAC 458-20-180 (Motor transportation, urban transportation), WAC 458-20-250 (Solid waste collection tax) and WAC 458-20-251 (Sewerage collection and other related activities))) the rules mentioned in subsection (1)(a) of this rule to determine their public utility tax liability.

((9) **Examples.** The following examples 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.

(a) City operates a community center which provides a number of activities and services. The center charges fees for court activities including tennis and racquetball, general admission to the swimming pool, swimming lessons, aerobics classes, and the use of weight equipment. The community center also provides programs targeted at youth and senior populations. These programs include arts and craft classes, dance instruction classes, and day camps providing a wide variety of activities such as picnics, nature walks, volleyball, and other games. The center provides banquet and meeting rooms to civic groups for a fee, but does not provide a meal service with the banquet facilities. The community center's operation is an enterprise activity, because it is more than fifty percent funded by user fees.

City's tax liability for the fees charged by the community center are as follows:

(i) Retailing B&O and retail sales taxes apply to all charges for the court activities, general admission to the swimming pool, and the use of weight equipment;

(ii) The retailing B&O tax applies to fees charged for aerobics classes. Retail sales tax does not apply because of the sales tax exemption for physical fitness classes provided by local governments;

(iii) Service and other business activities B&O tax applies to all fees for swimming lessons, the arts and crafts classes, dance instruction classes, day camps, and the rental of the banquet and meeting rooms. Retail sales tax does not apply to any part of the charge for the day camp because the portion of the day camp activities considered to be retail is minimal.

(b) City operates a swimming pool located at a high school. This swimming pool is open to the public in the evenings. City charges user fees for swimming lessons, water exercise classes, and general admission to the pool. City will occasionally "rent" the pool to a private organization for the organization's own use. In these cases, the private organization controls the overall operation and admission to the facility. City has no authority to control access and/or use when "renting" the pool to these organizations. City compares the user fees generated by the swimming pool to the total costs associated with the operation of the pool on an annual basis. The user fees never total "more than fifty percent" of the cost of pool operation, therefore the operation of the pool is not an enterprise activity.

City must collect and remit retail sales tax on all retail sales for which a retail sales tax exemption is not available, even though the B&O tax does not apply. Retail sales tax must be charged and collected on all general admission charges. Retail sales tax does not apply to the water exercise classes because of the retail sales tax exemption provided for physical fitness classes provided by local gov-

~~ernments. City would not collect retail sales tax on the charges for the swimming lessons or the "rental" of the pool to private businesses (license to use real estate) because these charges are not retail sales.~~

~~(c) City sponsors various baseball leagues as a part of City's efforts to provide recreational activities to its citizens. Teams joining a league are charged a "league fee." Individual participants are charged a "participation fee." The league fee entitles a team to join the league, and reserve the use of the ball fields for league games. The participation fee entitles an individual team member to participate in the baseball activity. City does not account for the operation of the ball fields under a single specific budget. The user fees generated from the baseball fields, as well as the costs of operating and maintaining these fields, are accounted for in City's overall parks and recreation system budget, which is not an enterprise activity.~~

~~The participation fees are retail sales and subject to the retail sales tax, because the team members pay these fees for the right to actually engage in an amusement and recreation activity. The league fees are not retail sales, because they simply entitle the teams to join an association of baseball teams that compete amongst themselves. (Refer also to WAC 458-20-183 on amusement and recreational activities.) The participation fees and league fees are not subject to the B&O tax, because these baseball fields are not operated as an enterprise activity. Had these fields been operated as an enterprise activity, the participation fees and league fees would also have been subject to the retailing and service and other business activities B&O tax classifications, respectively.~~

~~(d) Jane Doe enters into a contract with City to provide an aerobics class at City's community center. Jane is responsible for providing the aerobics class. City merely "rents" a room to Jane under a license to use agreement.~~

~~Jane Doe must collect and remit retail sales tax upon the charges for the aerobics classes. The charges for the aerobics classes do not qualify for the retail sales tax exemption provided by RCW 82.08.0291 merely because the classes are held at a local government facility. Jane Doe is not entitled to the retail sales tax exemption available to local governments.))~~