



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 458-20-257 (Rule 257) *Tangible personal property warranties and service contracts*. This rule, previously titled "Warranties & maintenance agreements," explains the tax reporting responsibilities of persons selling or performing services covered by warranties, service contracts, and mixed agreements.

Citation of existing rules affected by this order:

- Repealed:
- Amended: WAC 458-20-257 Tangible personal property warranties and service contracts
- Suspended:

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

Other authority : chapter 82.08 and 82.12 RCW

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 14-20-098 on September 29, 2014.

Describe any changes other than editing from proposed to adopted version: Please see attachment for listing of changes made.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: **An analysis was not prepared.**

Date adopted: April 2, 2015

NAME

Dylan Waits

SIGNATURE

TITLE

Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 02, 2015

TIME: 9:46 AM

WSR 15-09-005

**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:

Federal statute:	New	Amended	Repealed
Federal rules or standards:	New	Amended	Repealed
Recently enacted state statutes:	New	Amended	Repealed

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

New	Amended	Repealed
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The number of sections adopted in the agency's own initiative:

New	Amended	1	Repealed
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	Amended	Repealed
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The number of sections adopted using:

Negotiated rule making:	New	Amended	Repealed	
Pilot rule making:	New	Amended	Repealed	
Other alternative rule making:	New	Amended	1	Repealed


STATE OF WASHINGTON
DEPARTMENT OF REVENUE

PERMANENT RULE

WAC 458-20-257

Adopted under notice filed as WSR 14-20-098 on September 29, 2014.

The following describes changes made, other than editing, from proposed to adopted version:

Changes have been made to the rule version to be adopted including the removal of Part I that covered Real Property Service Contracts. This topic will be covered by the Department of Revenue in a separate document. The title of the rule is now WAC 458-20-257 Tangible personal property warranties and service contracts. The title as proposed was WAC 458-20-257 Real property warranties and service contracts – Tangible personal property warranties and service contracts.

With the removal of Part I: Real Property Service Contracts, the rule is divided into subsections instead of parts with subsections. The rule has been renumbered appropriately.

In subsection (3) **Definitions**, a definition for “seller” has been added. Previously subsection (201).

In subsection (4)(a), previously subsection (202), language shown underlined has been added to explain who is responsible for collecting and remitting the retail sales tax and now reads:

“(a) **Retail sales.** Income from agreements sold with or without tangible personal property to consumers is subject to the retailing B&O tax and retail sales tax, unless a specific exemption applies. Income from the sales of insurance riders to consumers is also subject to retailing B&O tax and retail sales tax. See RCW 82.04.050. Sellers of agreements and insurance riders to consumers are responsible for collecting the retail sales tax from the consumers, and remitting it and retailing B&O tax to the department of revenue (department).

If a seller is acting as agent or broker for another party, such as the actual warrantor, the seller is still liable for collecting the retail sales tax from the buyer and remitting it to the department. In this case, the seller as an agent or broker of the warrantor normally receives a commission. Commission income is taxable under the service and other business activities B&O tax classification. See subsection (5) of this rule for Sales by third parties. The warrantor’s gross in-come on the sale is taxable under the retailing B&O tax classification. There is no deduction allowed for the commission paid to the agent or broker.”

In addition, Example 1 has been moved to (4)(b) Wholesale sales.

In (4)(b) both Examples 2 and 3 have had a sentence added to state who (the store) is responsible for collecting the retail sales tax and remitting it along with retailing B&O tax to the Department of Revenue.

One sentence, shown underlined, has been added to subsection (4)(c):

“(c) **Agreement purchases from a third party.** When an agreement is purchased by a manufacturer, wholesaler, or retailer to be included in the sale of tangible personal property, the purchase of the agreement can be made at wholesale with the use of a reseller permit. In this instance, the manufacturer, wholesaler, or retailer is not the consumer of the warranty. When the retailer sells the tangible personal property including the agreement, it will collect the retail sales tax from the customer and remit it and the retailing B&O tax to the department.”

PERMANENT RULE

WAC 458-20-257

Continued

One sentence, shown underlined, has been added to subsection (4)(d):

“(d) **Deferred sales or use tax due.** If a manufacturer, wholesaler, or retailer purchases an agreement, without knowing whether it will be sold or given as an incentive with the sale of tangible personal property, the agreement can be purchased at wholesale with the use of a reseller permit. If there is intervening use of the agreement by the manufacturer, wholesaler, or retailer, deferred sales or use tax will be due.”

The last sentence in subsection (4)(f) Example 8 has been revised. It read:

“As there is no corresponding tax exemption for B&O tax, the total amount of \$10,500 is subject to the retailing B&O tax.”

The sentence now reads: “As there is no corresponding tax exemption for B&O tax, Company A will pay retailing B&O tax to the department on the total amount of \$10,500 along with remitting the retail sales tax collected from Dealer BF.”

The heading for subsection (5) has been changed from “**Commissions earned by third parties**” to “**Sales by third parties.**” In addition, the following underlined language has been added:

“Consideration received by a third party as a commission, for selling an agreement for the actual warrantor, is generally subject to B&O tax under the service and other activities B&O tax classification. In this situation, the third-party seller never takes possession of the agreement, and the warrantor maintains liability for the provisions of the agreement.

(a) **Responsibility for payment of retailing B&O tax.** The warrantor is subject to retailing B&O tax on the gross sales price received from the sales of agreements by third parties. No deduction is allowed for commissions paid to third parties.

(b) **Responsibility for collection of retail sales tax.** The third party is responsible for collecting the retail sales tax from the buyer and remitting it, along with service and other activities B&O tax on its commission income, to the department.” Previously subsection (203).

In subsection (8)(c) the reference to WAC 458-20-15503 has been removed as not applicable. Previously subsection (303).

AMENDATORY SECTION (Amending WSR 90-10-081, filed 5/2/90, effective 6/2/90)

WAC 458-20-257 Tangible personal property warranties and ((main-tenance agreements)) service contracts. ((1) **Definitions.** For the purposes of this section, the following terms will apply:

(a) ~~Warranties.~~ Warranties, sometimes referred to as guarantees, are agreements which call for the replacement or repair of tangible personal property with no additional charge for parts or labor, or both, based upon the happening of some unforeseen occurrence, e.g., the property needs repair within the warranty period.

(b) ~~Warrantor.~~ The warrantor is the person obligated, as specified in the warranty agreement, to perform labor and/or provide materials to the owner of the personal property to which the warranty agreement relates.

(c) ~~Maintenance agreements.~~ Maintenance agreements sometimes referred to as service contracts, are agreements which require the specific performance of repairing, cleaning, altering, or improving of tangible personal property on a regular or irregular basis to ensure its continued satisfactory operation.

(2) **B&O tax.**

(a) ~~Manufacturer's warranties included in the retail selling price of the article being sold.~~

(i) ~~When a manufacturer's warranty is included in the retail selling price of the property sold and no additional charge is made, the value of the warranty is a part of the selling price. The value of the warranty is included in the "gross proceeds of sale" of the article sold and reported under the appropriate classification, e.g. retailing, wholesaling, etc.~~

(ii) ~~When a repair is made by the manufacturer warrantor under the warranty, the value of the labor and or parts provided are not subject to B&O tax.~~

(iii) ~~When a person other than the manufacturer warrantor makes a repair for the manufacturer warrantor, the person making the repair is making a wholesale sale of the repair service to the manufacturer warrantor. The person doing the repair is B&O taxable under the wholesaling classification on the value of the parts and labor provided.~~

(b) ~~Nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold.~~

(i) ~~When a warranty is sold for a charge separate from the charge of the product, e.g., a warranty extending the manufacturer's warranty, the charge is reported in the service and other activities classification of the B&O tax.~~

(ii) ~~When a repair is made by the warrantor under a separately stated warranty, the value of the labor and or parts provided are not subject to B&O tax.~~

(iii) ~~When a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale of the repair service to the warrantor. The person making the repair is B&O taxable under the retailing classification.~~

(c) ~~Maintenance agreements.~~

(i) ~~Maintenance agreements (service contracts) require the periodic specific performance of inspecting, cleaning, physical servicing, altering, and/or improving of tangible personal property. Charges for maintenance agreements are retail sales, subject to retailing B&O tax and retail sales tax under all circumstances.~~

~~(d) Amounts received as a commission or other consideration for selling a warranty or maintenance agreement of a third party warrantor or provider are generally subject to B&O tax under the service and other activities classification. However, if the seller of the warranty is licensed under chapter 48.17 RCW with respect to this selling activity, the commission is subject to B&O tax under the insurance agent classification.~~

~~(e) In the event a warrantor purchases an insurance policy to cover the warranty, amounts received by the warrantor under the insurance policy are insurance claim reimbursements not subject to B&O tax.~~

~~(3) Retail sales tax.~~

~~(a) Manufacturer's warranties included in the retail selling price of the article being sold.~~

~~(i) When a manufacturer's warranty is included in the retail selling price of the property sold and no additional or separate charge is made, the value of the warranty is a part of the selling price and retail sales tax applies to the entire selling price of the article being sold.~~

~~(ii) When a repair is made by the manufacturer warrantor under the warranty, the repair performed is not a retail sale and no retail sales tax is collected.~~

~~(iii) When a person other than the manufacturer warrantor makes a repair for the manufacturer warrantor, the person making the repair is making a wholesale sale of the repair service to the manufacturer warrantor. No retail sales tax is collected from the manufacturer warrantor.~~

~~(b) Nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold.~~

~~(i) When a warranty is sold for a charge separate from the charge of the product, e.g., a warranty extending the manufacturer's warranty, the sale is not a retail sale and no retail sales tax is collected on the amount charged.~~

~~(ii) When a repair is made by the warrantor under its own separately stated warranty, the value of the labor and/or parts provided is not a retail sale and no retail sales tax is collected.~~

~~(iii) When a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale of the repair service to the warrantor. Retail sales tax is collected from the warrantor measured by the labor and materials provided.~~

~~(c) Maintenance agreements are sales at retail and subject to retail sales tax under all circumstances.~~

~~(i) Parties subcontracting to the party selling the maintenance agreement are making sales at wholesale, and are required to take from their customer (maintenance seller) a resale certificate as provided in WAC 458-20-102.~~

~~(4) USE TAX.~~

~~(a) Manufacturer's warranties included in the retail selling price of the article being sold.~~

~~(i) When a manufacturer warrantor makes repairs required under its warranty, the value of the parts used in making the repairs is not subject to use tax.~~

~~(ii) Where a third party makes repairs for a manufacturer warrantor, the transaction is a wholesale sale and the parts used in the repair are not subject to use tax.~~

~~(b) Nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold.~~

(i) When a repair is made by the warrantor under a separately stated warranty, the warrantor is the consumer of the parts and the parts are subject to use tax measured by the warrantor's cost.

(ii) When a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale to the warrantor. Retail sales tax, not use tax, is collected.

(c) Maintenance agreements.

(i) Persons performing services under the requirements of maintenance agreements sold by them, are not subject to use tax or retail sales tax on materials which become a part of the required repairs or services.

(5) **Additional service -- deductible.** In the event services are provided in addition to any warranty or maintenance agreement, such services are separately taxable as retail sales, subject to retail sales tax and retailing B&O tax. This includes so called "deductible" amounts not covered by a warranty or maintenance agreement.

(6) **Mixed agreements.** If an agreement contains warranty provisions but also requires the actual specific performance of inspection, cleaning, servicing, altering, or improving the property on a regular or irregular basis, without regard to the operating condition of the property, such agreements are fully taxable as maintenance agreements, not warranties.

(7) **Examples:**

(a) An automobile dealer sells a vehicle to a customer for selling price of \$15,000 cash and the selling price includes a manufacturer's limited warranty for 5 years or 50,000 miles. The owner of the vehicle has \$600 (\$200 parts and \$400 labor) warranty work, paying no deductible, performed by the dealer who is not the manufacturer-warrantor. The tax liability of the dealer is as follows:

(i) Retail sales tax is collected on the \$15,000 selling price.

(ii) The \$15,000 selling price is reported under the retailing B&O tax classification. The \$600 repair is reported under the wholesaling B&O tax classification.

(iii) The \$200 of parts used in the repair are not subject to use tax.

(b) The automobile dealer in example (a) also sells its own extended warranty to the customer for \$200. The dealer insures itself with an insurance carrier and under the policy, claims are paid on the retail value of the repairs. In addition to the repairs in example (a), the customer has the dealer complete \$500 of repairs under the dealer's extended warranty. The customer paid the \$100 deductible and the dealer received \$400 from his insurance carrier. In completing the repair, the dealer installed parts from its inventory which had a cost to the dealer of \$150 and subcontracted part of the repair to an electrical shop which charged the dealer \$200. The tax liability to the dealer and the subcontractor are as follows:

(i) The dealer reports the \$200 sale of the warranty under the service and other activities classification of B&O tax. No retail sales tax is collected on the sale.

(ii) The \$100 deductible received by the dealer is a retail sale subject to retail sales tax and retailing B&O tax.

(iii) The \$400 received by the dealer from the insurance company is a nontaxable insurance claim reimbursement.

(iv) The dealer is the consumer of the parts removed from its inventory and used in the repair. The \$150 dealer cost of the parts taken from inventory is subject to use tax.

~~(v) The subcontractor is making a retail sale to the dealer subject to retail sales tax and retailing B&O.)~~ (1) **Introduction.** This rule explains the business and occupation (B&O) tax, retail sales tax, and use tax reporting responsibilities of persons selling or performing services covered by warranties, service contracts, and mixed agreements for tangible personal property. For additional information on computer software maintenance agreements see WAC 458-20-15502, Taxation of computer software.

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

(3) **Definitions.** For the purpose of this rule, the following terms will apply:

(a) **Agreement.** Unless otherwise stated, "agreement" means "service contract," "warranty," or "mixed agreement" as those terms are defined.

(b) **Insurance rider.** An insurance rider is an attachment to an insurance policy that modifies the conditions of the policy by expanding or restricting its benefits or excluding certain conditions from the coverage.

(c) **Mixed agreement.** A mixed agreement is an agreement that contains provisions of both warranty and service contracts.

(d) **Seller.** "Seller" means every person making sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal.

(e) **Service contract.** A service contract, sometimes referred to as a maintenance agreement or even an extended warranty, provides for the repairing, cleaning, altering, or improving of tangible personal property, generally for the purpose of continued satisfactory operation. These services may be performed on a regular or irregular basis. Even though a service contract may be referred to by some other name, it is the coverage that determines whether the contract is a service contract or extended warranty.

(f) **Warranty.** A warranty, sometimes referred to as a guarantee, is an agreement which provides for the replacement or repair of tangible personal property at no additional charge or at a reduced charge for tangible personal property, labor, or both, or to compensate for the replacement or repair of tangible personal property, based upon the happening of some unforeseen occurrence, e.g., a component part fails and the property needs repair. Unless otherwise stated, the term warranty includes both a warranty and an extended warranty.

(4) **Sales of agreements for tangible personal property.**

(a) **Retail sales.** Income from agreements sold with or without tangible personal property to consumers is subject to the retailing B&O tax and retail sales tax, unless a specific exemption applies. Income from the sales of insurance riders to consumers is also subject to retailing B&O tax and retail sales tax. See RCW 82.04.050. Sellers of agreements and insurance riders to consumers are responsible for collecting the retail sales tax from the consumers, and remitting it and retailing B&O tax to the department of revenue (department).

If a seller is acting as agent or broker for another party, such as the actual warrantor, the seller is still liable for collecting the retail sales tax from the buyer and remitting it to the department. In this case, the seller as an agent or broker of the warrantor normally receives a commission. Commission income is taxable under the service and other business activities B&O tax classification. See subsection (5) of this rule for "Sales by third parties." The warrantor's gross

income on the sale is taxable under the retailing B&O tax classification. There is no deduction allowed for the commission paid to the agent or broker.

(b) **Wholesale sales.** Sales of agreements can be made at wholesale when the buyer will be reselling the agreement without intervening use, or including the agreement in the sale of tangible personal property, and the seller takes from the buyer a copy of the buyer's reseller permit. The reseller permit documents the wholesale nature of any sale as provided in WAC 458-20-102, Reseller permits. (Reseller permits replaced resale certificates effective January 1, 2010.)

Example 1. An automobile dealer sells a vehicle to a customer for a selling price of \$20,000 that includes a manufacturer's limited five years or 50,000 miles warranty. The automobile dealer extends coverage for an additional two years, as a bonus to the customer. When the automobile dealer purchases the two-year agreement from a warranty provider, with the intent to sell the agreement along with the sale of the vehicle to the customer, the purchase of the extended warranty by the automobile dealer is for resale.

(i) **Example 2.** A home improvement store (store) sells a lawnmower to a customer. The store also makes available for purchase a manufacturer's agreement for extended coverage. The customer decides to purchase an agreement from the store for the lawnmower. As the store is reselling the agreement, the store may purchase it at wholesale from the manufacturer with the use of a reseller permit. Both the sales of the lawnmower and agreement to the customer are taxable retail sales. The store will collect the retail sales tax from the customer, and remit it along with retailing B&O tax to the department.

(ii) **Example 3.** For a special holiday sale, the home improvement store in Example 2 purchases the manufacturer's extended warranties to provide with the sales of lawnmowers. The store makes no intervening use of the extended warranties, and does not charge customers for the warranties. The warranty purchases by the store are wholesale purchases as long as the store provides a copy of its reseller permit to the manufacturer. The store is not the consumer of the warranties as the warranties are provided to customers as a condition of purchase of the lawnmowers. The store will collect retail sales tax, from the customers on the sales of the lawnmowers, and remit it along with retailing B&O tax to the department.

(c) **Agreement purchases from a third party.** When an agreement is purchased by a manufacturer, wholesaler, or retailer to be included in the sale of tangible personal property, the purchase of the agreement can be made at wholesale with the use of a reseller permit. In this instance, the manufacturer, wholesaler, or retailer is not the consumer of the warranty. When the retailer sells the tangible personal property including the agreement, it will collect the retail sales tax from the customer and remit it and the retailing B&O tax to the department.

Example 4. If a vehicle wholesaler sells a vehicle to a retailer and includes an agreement with the sale, the sale of the vehicle with agreement is a wholesale sale. RCW 82.04.050. The retailer must provide the wholesaler with a reseller permit.

(d) **Deferred sales or use tax due.** If a manufacturer, wholesaler, or retailer purchases an agreement, without knowing whether it will be sold or given as an incentive with the sale of tangible personal property, the agreement can be purchased at wholesale with the use of a reseller permit. If there is intervening use of the agreement by the

manufacturer, wholesaler, or retailer, deferred sales or use tax will be due.

(e) Additional charges for parts or repair services covered under an agreement. In some cases, a customer is required to pay an amount for services or parts not fully covered under an agreement. This additional amount is subject to both the retailing B&O tax and retail sales tax, unless an exemption applies.

Example 5. The automobile dealer in Example 1 sells a vehicle to a customer for a selling price of \$20,000 that includes a manufacturer's limited five-year or 50,000 miles warranty. The dealer also sells its own extended warranty to the customer for \$200. The dealer insures itself with an insurance carrier, and under the policy claims are paid on the retail value of the repairs. The customer has the dealer complete \$500 of repairs under the warranty. The customer pays the dealer a reduced charge of \$100 for the warranty services and the dealer receives \$400 from its insurance carrier. In completing the repair, the dealer installed parts from its inventory which had a cost to the dealer of \$150 and subcontracted part of the repair to an electrical shop which charged the dealer \$200. The tax liability to the dealer and subcontractor is as follows:

(i) In addition to retail sales tax collected from the customer on the \$20,000 selling price, retail sales tax must be collected on the \$200 selling price for the dealer's own extended warranty.

(ii) The \$20,200 selling price for both the automobile and warranty is reported under the retailing B&O tax and retail sales tax classifications on the excise tax return. The \$20,000 paid for the automobile (but not the cost of the warranty) is also subject to the motor vehicle sales excise tax.

(iii) The \$100 charge paid by the customer for the warranty services performed is subject to the retailing B&O tax, and the dealer must collect retail sales tax from the customer.

(iv) The \$400 received by the dealer from the insurance company is a nontaxable insurance claim reimbursement.

(v) The \$150 cost of the parts taken from inventory is not subject to use tax.

(vi) The subcontractor is making a \$200 wholesale sale to the dealer, if the dealer provides the subcontractor with a copy of its reseller permit.

(f) Exemptions. The sale of an agreement by a retailer is not exempt simply because the sale of the tangible personal property to which it applies is exempt. Generally, for the sale of the agreement to be exempt, there must be a provision in statute exempting all services or products covered by the agreement. If all such obligations are not exempt, the sale of the agreement to the consumer is subject to retail sales tax. See RCW 82.08.190 and 82.08.195 for additional information regarding the taxation of bundled transactions.

(i) Service contracts. Since a service contract is a contract for the repairing, cleaning, altering, or improving of the tangible personal property covered by the contract, the sale of a service contract by the retailer may be exempt from retail sales tax if there is a statutory exemption for all activities covered by the contract.

(A) Example 6. RCW 82.08.955 provides a retail sales tax exemption for both the sales and repair of machinery and equipment used directly for retail sales of a biodiesel blend or E85 motor fuel. Company A sells machinery that qualifies for exemption under RCW 82.08.955 to Dealer BF. The purchase price of the machinery is \$10,000 and includes a ninety-day warranty against defects in material and workman-

ship. Dealer BF also purchases a service contract for an additional \$300 that covers the repairing and cleaning of qualified parts. If Dealer BF provides Company A with an exemption certificate, the \$10,000 selling price and \$300 service contract price are exempt from retail sales tax. Company A reports the total \$10,300 under the retailing B&O tax and retail sales tax classifications, taking a deduction under retail sales tax for the exemption.

(B) **Example 7.** RCW 82.08.809 provides an exemption for the purchase of vehicles using clean alternative fuels provided the provisions of the exemption are followed. A dealer sells a new vehicle powered by natural gas for \$30,000 and a \$500 two-year service contract to a customer. The sale of the vehicle is exempt from retail sales tax, but the sale of the service contract is subject to retail sales tax as there is no statutory exemption for the repair activities covered by the service contract.

(ii) **Warranties.** The sale of a warranty by a retailer is exempt only if a specific statutory exemption is available. The place of sale for a warranty is the seller's business location if the buyer receives the warranty at that location. See RCW 82.32.730 and WAC 458-20-145, Local sales and use tax for additional sourcing information. See WAC 458-20-15502 for computer software warranties.

Warranties purchased and received outside of Washington are subject to use tax when put to use in Washington. See RCW 82.12.020.

Example 8. Assume that Dealer BF in Example 6 also purchases an extended warranty for an additional \$200. If Dealer BF provides Company A with a valid exemption certificate, the \$10,000 selling price and \$300 service contract are exempt from retail sales tax, but the \$200 for the extended warranty is subject to retail sales tax. RCW 82.08.955 does not provide for an exemption for a warranty for eligible equipment. As there is no corresponding tax exemption for B&O tax, Company A will pay retailing B&O tax to the department on the total amount of \$10,500 along with remitting the retail sales tax collected from Dealer BF.

(iii) **Mixed agreements.** The sale to a consumer of a mixed agreement for tangible personal property, which by definition contains provisions of both a warranty and a service contract, is a "bundled transaction." Retail sales tax must generally be collected from the consumer on the selling price of a mixed agreement, unless both the warranty provisions and service contract provisions each separately qualify for a retail sales tax exemption. Refer to RCW 82.08.190 and 82.08.195 for additional guidance on how retail sales tax applies to bundled transactions.

(5) **Sales by third parties.** Consideration received by a third party as a commission, for selling an agreement for the actual warrantor, is generally subject to tax under the service and other activities tax classification. In this situation, the third-party seller never takes possession of the agreement, and the warrantor maintains liability for the provisions of the agreement.

(a) **Responsibility for payment of retailing B&O tax.** The warrantor is subject to retailing B&O tax on the gross sales price received from the sales of agreements by third parties. No deduction is allowed for commissions paid to third parties.

(b) **Responsibility for collection of retail sales tax.** The third party is responsible for collecting the retail sales tax from the buyer and remitting it, along with service and other activities B&O tax on its commission income, to the department. If the seller of the agreement is licensed under chapter 48.17 RCW with respect to this

selling activity, the seller owes tax on commissions under the insurance producers B&O tax classification.

(6) **Sales of repair services or parts to obligor.** A person obligated under an agreement, including any third-party obligor under an agreement sold to a retailer and provided at no additional charge to the end consumer, may purchase the following from a supplier or service provider at wholesale without incurring retail sales tax, provided the obligor provides the supplier or service provider with a reseller permit:

- Parts purchased to replace or become an ingredient or component of tangible personal property covered by the agreement, as long as there is no intervening use of the parts as a consumer; and
- Repair services purchased to satisfy the obligor's obligations under an agreement.

The supplier or service provider is taxable under the wholesaling B&O tax classification on the value of the parts and labor provided.

(7) **Warranties with insurance elements.** There are tangible personal property agreements that include elements of insurance (i.e., theft, loss) and elements of warranty (operational failure, damage). Income from sales to consumers of agreements defined as a warranty, service contract or maintenance agreement, that are not otherwise insurance contracts where tax has been paid under Title 48 RCW insurance premiums tax, is subject to retailing B&O tax and retail sales tax. See RCW 48.14.080. If a bundled transaction includes both taxable and nontaxable plans, retailing B&O and retail sales taxes are due on the income. For more information on bundled transactions see RCW 82.08.190 and 82.08.195.

(8) **Commonly asked questions.**

(a) **Is it a warranty or service contract when a credit card company replaces lost or damaged items purchased by one of their credit card holders?** The credit card company (company) covering the purchased items would be providing an insurance product, but the company may not be charging the card holders for the benefit of having lost or damaged items replaced at no charge and if not, the company would not owe premiums tax, but owe B&O tax on income. When the company replaces items, the company is responsible for paying sales tax on the items purchased and provided as replacements.

(b) **Is identity theft protection considered a warranty?** Identity theft protection is not tangible personal property. The protection plan may be a combination of products including monitoring a person's accounts. It depends on the coverage as to whether the protection plan is an insurance product that is subject to the premiums tax.

(c) **Are agreements that cover accidentally dropping a phone in water an insurance product?** Most agreements are service contracts and not insurance products, and are covered under chapter 48.110 RCW, Service contracts and protection product guarantees.

(d) **If a loaner piece of equipment is included in the cost of a warranty, does the customer using the loaner owe use tax on the loaned piece of equipment?** If the loan of the equipment is included in the warranty, the customer does not owe use tax on the use of the loaned equipment.