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THE STATE OF MASHING

RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

OFFICE OF THE CODE REVISER STATE OF WASHINGTON FILED

DATE: March 31, 2022 TIME: 9:41 AM

WSR 22-08-114A

Agency: Department of Revenue

Effective date of rule:

Permanent Rules

 \boxtimes 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? \Box Yes \boxtimes No If Yes, explain:

Purpose: The department is amending WAC 458-20-195 to incorporate 2021 legislation, Engrossed Second Substitute House Bill 1477. This legislation established a tax to finance the national 988 system to enhance and expand behavioral health crisis and suicide prevention services. The rule addresses the deductibility of the tax.

Citation of rules affected by this order:

New:

Repealed:

Amended: WAC 458-20-195 Taxes, deductibility Suspended:

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 <u>WSR 22-03-065</u> on January 14, 2022 (date). 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 by contacting:

Name: Address: Phone: Fax:

TTY:

Email:

Web site:

Other: This rule is not a significant legislative rule as defined by RCW 34.05.328.

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Federal statute: New	w Amended Repealed			
Federal rules or standards: New	w Amended Repealed			
Recently enacted state statutes: New	w Amended <u>1</u> Repealed			
The number of sections adopted at the request of a nongovernmental entity:				
Nev	w Amended Repealed			
The number of sections adopted on the agency's own initiative:				
Nev	w Amended Repealed			
The number of sections adopted in order to clarify, streamline, or reform agency procedures:				
Net	w Amended Repealed			
The number of sections adopted using:				
Negotiated rule making: Negoti	w Amended Repealed			
Pilot rule making: New	w Amended Repealed			
Other alternative rule making: New	w Amended Repealed			
Date Adopted: March 31, 2022	Signature:			
Name: Atif Aziz	Ah Aiz			
Title: Rules Coordinator	1-88			

AMENDATORY SECTION (Amending WSR 20-22-093, filed 11/3/20, effective 12/4/20)

WAC 458-20-195 Taxes, deductibility. (1) Introduction. This rule explains the circumstances under which taxes may be deducted from the gross amount reported as the measure of tax under the business and occupation tax, retail sales tax, and public utility tax. It also lists deductible and nondeductible taxes.

(2) **Deductibility of taxes.** In computing tax liability, the amount of certain taxes may be excluded or deducted from the gross amount reported as the measure of tax under the business and occupation (B&O) tax, the retail sales tax, and the public utility tax. These taxes may be deducted provided they have been included in the gross amount reported under the classification with respect to which the deduction is sought, and have not been otherwise deducted through inclusion in the amount of another allowable deduction, such as credit losses.

The amount of taxes which are not allowable as deductions or exclusions must in every case be included in the gross amount reported. License and regulatory fees are not deductible. Questions regarding the deductibility or exclusion of a tax that is not specifically identified in this rule should be submitted to the department of revenue for determination.

(3) **Motor vehicle fuel taxes.** RCW 82.04.4285 provides a B&O tax deduction for certain state and federal motor vehicle fuel taxes when the taxes are included in the sales price. These taxes include:

Fuel tax	chapter 82.38 RCW;
Federal tax on diesel and special motor fuels (including leaking underground storage tank taxes), except train and aviation fuels.	26 U.S.C.A. Sec. 4041;
Federal tax on inland waterway commercial fuel	26 U.S.C.A. Sec. 4042;
Federal tax on gasoline and diesel fuel for use in highway vehicles and motorboats	26 U.S.C.A. Sec. 4081.

(4) Taxes collected as an agent of municipalities, the state, or the federal government. The amount of taxes collected by a taxpayer, as agent for municipalities, the state of Washington or its political subdivisions, or the federal government, may be deducted from the gross amount reported. These taxes are deductible under each tax classification of the Revenue Act under which the gross amount from such sales or services must be reported.

This deduction applies only where the amount of such taxes is received by the taxpayer as collecting agent and is paid by the agent directly to a municipality, the state, its political subdivisions, or to the federal government. When the taxpayer is the person upon whom a tax is primarily imposed, no deduction or exclusion is allowed, since in such case the tax is a part of the cost of doing business. The mere fact that the amount of tax is added by the taxpayer as a separate item to the price of goods sold, or to the charge for services rendered, does not in itself, make such taxpayer a collecting agent for the purpose of this deduction. Examples of deductible taxes include:

FEDERAL—	
Tax on communications services (telephone and teletype-writer exchange services).	26 U.S.C.A. Sec. 4251;
Tax on transportation of persons.	26 U.S.C.A. Sec. 4261;
Tax on transportation of property.	26 U.S.C.A. Sec. 4271;
STATE—	
988 crisis hotline tax collected from subscribers	chapter 82.86 RCW;
Aviation fuel tax collected from buyers by a distributor as defined by RCW 82.42.010	chapter 82.42 RCW;
Leasehold excise tax collected from lessees	chapter 82.29A RCW;
Oil spill response tax collected from taxpayers by marine terminal operators	chapter 82.23B RCW;
Retail sales tax collected from buyers.	chapter 82.08 RCW;
Solid waste collection tax collected from buyers	chapter 82.18 RCW;
State enhanced 911 tax collected from subscribers	chapter 82.14B RCW;
Use tax collected from buyers.	chapter 82.12 RCW;
MUNICIPAL—	
City admission tax	RCW 35.21.280;
County admissions and recreations tax	chapter 36.38 RCW;
County enhanced 911 tax collected from subscribers	chapter 82.14B RCW;
Local retail sales and use taxes collected from buyers.	chapter 82.14 RCW.

(5) **Specific taxes which are not deductible.** Examples of specific taxes which may be neither deducted nor excluded from the measure of the tax include the following:

FEDERAL—	
Agricultural Adjustment Act (A.A.A.) compensating tax	7 U.S.C.A. Sec. 615(e);
A.A.A. processing tax.	7 U.S.C.A. Sec. 609;
Aviation fuel.	26 U.S.C.A. Sec. 4091;
Distilled spirits, wine and beer taxes.	26 U.S.C.A. chapter 51;
Diesel and special motor fuel tax for fuel used for purposes other than motor vehicles and	
motor-boats	26 U.S.C.A. Sec. 4041;
Employment taxes	26 U.S.C.A. chapters 21-25;

Firearms, shells and cartridges.26 U.S.C.Gift taxes.26 U.S.C.AImporters, manufacturers and dealers in firearms.26 U.S.C.AIncome taxes.26 U.S.C.AInsurance policies issued by foreign insurers.26 U.S.C.ASale and transfer of firearms tax.26 U.S.C.ASuperfund tax.26 U.S.C.ASuperfund tax.26 U.S.C.ASuperfund tax.26 U.S.C.AWagering taxes.26 U.S.C.AWagering taxes.TAlcoholic beverages licenses and stamp taxes.chapterBoxing, sparring and wrestling tax.chapterBusiness and occupation tax.chapter	
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Local use tax when not	
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Municipal utility taxes.

Municipal and county real estate excise taxes.

chapter 54.28 RCW;

chapter 82.46 RCW.