



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: April 16, 2020

TIME: 3:15 PM

WSR 20-09-109

Agency: Department of Revenue

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR

Preproposal Statement of Inquiry was filed as WSR 20-05-063 ; 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 458-20-103 Time and place of sale. The Department proposes to revise the rule and retitle it: Gift certificates – Sale deemed to occur and retail sales tax collected at time of redemption.

Hearing location(s):

Date: **Time:** **Location:** (be specific) **Comment:**

May 26, 2020	10:00 am	Conference Room 114A 6400 Linderson Way SW Tumwater, Washington 98501	
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Date of intended adoption: June 2, 2020 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Tim Danforth (until 4/30/2020)

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

Email: TimD@dor.wa.gov

Fax: 360-534-1606

Other: after 4/30/2020, send written comments to Atif Aziz at AtifA@dor.wa.gov

By (date) _____

Assistance for persons with disabilities:

Contact Julie King or Renee Cosare

Phone: (360)704-5733 or (360) 704-5734

Fax:

TTY: 800-833-6384

Email:

Other:

By (date) _____

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Department plans to amend WAC 458-20-103 to remove provisions inconsistent with statutory authority and/or redundant with other rules, and to clarify existing law regarding the taxation of gift certificates. The proposed amended rule focuses on the timing and the measure of the retail sales tax on the redemption of gift certificates. Additional references to RCW 82.32.023 (defining product) and RCW 82.08.020 (defining selling price) are added for clarification. The rule is retitled to reflect its content.

Reasons supporting proposal: The Department of Revenue would like to revise WAC 458-20-103 because it is no longer consistent with statutory authority and has been made redundant or replaced by other rules. See RCW 82.32.730; RCW 82.04.040; RCW 82.04.067; RCW 82.08.0531; WAC 458-20-108; WAC 458-20-145; WAC 458-20-211; WAC 458-20-193; WAC 458-20-221; WAC 458-20-19401.

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

Statute being implemented: RCW 82.04.040, RCW 82.04.050

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:	Tim Danforth	6400 Linderson Way SW, Tumwater, WA	(360) 534-1538
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. The proposed rule language for WAC 458-20-103 provides information to businesses regarding the timing and the measure of the retail sales tax on the redemption of gift certificates. The proposed rule does not impose more than minor costs on businesses, as it does not propose any new tax rate, tax measure, reporting or recordkeeping requirements not already established by statute.

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: April 16, 2020

Name: Atif Aziz

Title: Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 82-12-021, filed 5/25/82)

~~WAC 458-20-103 ((Time and place of sale.)) Gift certificates—Sale deemed to occur and retail sales tax collected at time of redemption. ((Under the Revenue Act of 1935, as amended, the word "sale" means any transfer of the ownership of, title to, or possession of, property for a valuable consideration, and includes the sale or charge made for performing certain services.~~

~~For the purpose of determining tax liability of persons selling tangible personal property, a sale takes place in this state when the goods sold are delivered to the buyer in this state, irrespective of whether title to the goods passes to the buyer at a point within or without this state.~~

~~With respect to the charge made for performing services which constitute sales as defined in RCW 82.04.040 and 82.04.050, a sale takes place in this state when the services are performed herein. With respect to the charge made for renting or leasing tangible personal property, a sale takes place in this state when the property is used in this state by the lessee.~~

~~Where gift certificates are sold which will be redeemed in merchandise, or in services which are defined by the Revenue Act as retail sales, the sale is deemed to occur and the retail sales tax shall be collected at the time the certificate is actually redeemed for the merchandise or services. The measure of the tax is the total selling price of the merchandise or services at the time of the redemption, including the redemption value of the certificate, or any part thereof, which is applied toward the selling price. (See WAC 458-20-235 for effect of rate changes on prior contracts and sales agreements. See also WAC 458-20-131 which deals with merchandising games, and which covers the situation where certificates or trade checks are issued which may be redeemed for services which are not retail sales, such as barber services, admissions, etc.)~~

~~Revised March 2, 1982.) (1) Tax timing. A purchase of a product, as defined in RCW 82.32.023, or services made through the redemption of a gift certificate or gift card is deemed to occur for retail sales tax purposes at the time the certificate or card is actually redeemed for the product or services. Retail sales tax must be collected at the time of redemption.~~

~~(2) Tax measure. The measure of the tax is the total selling price of the product or services at the time of the redemption, including the redemption value of the certificate, or any part thereof, which is applied toward the selling price. See RCW 82.08.010 for the definition of selling price.~~