



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

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FILED

DATE: October 01, 2019

TIME: 8:15 AM

WSR 19-20-091

Agency: Department of Revenue

Title of rule and other identifying information: (describe subject) WAC 458-20-177 Sales of motor vehicles, campers, and trailers to nonresident consumers

Purpose of the proposal and its anticipated effects, including any changes in existing rules: WAC 458-20-177 is being amended to incorporate language from ESSB 5997 (Part I) (2019), Narrowing the Nonresident Sales and Use Tax Exemption. WAC 458-20-177 is also being amended to modernize the structure and language of the rule.

Reasons supporting proposal: The rule is being updated to amend and incorporate changes resulting from new legislation. ESSB (Part I) (2019).

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

Statute being implemented: RCW 82.08.0264, RCW 82.08.0269, RCW 82.08.0273

Is rule necessary because of a:

Federal Law?

☐ Yes ☒ No

Federal Court Decision?

☐ Yes ☒ No

State Court Decision?

☐ Yes ☒ No

If yes, CITATION:

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

☐ Private

☐ Public

☒ Governmental

Name of agency personnel responsible for:

Name

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

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- ☐ Relates only to internal governmental operations that are not subject to violation by a person;
- ☒ Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- ☒ Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- ☐ Content is explicitly and specifically dictated by statute;
- ☐ Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- ☐ Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- ☐ The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- ☐ The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- ☐ The rule is no longer necessary because of changed circumstances; or
- ☐ Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): The expedited rule-making process is applicable to this rule update because the Department is incorporating changes resulting from 2019 legislation, and to modernize the language and structure of the rule for readability purposes without changing the substance of the rule.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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Date: October 1, 2019

Name: Atif Aziz

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AMENDATORY SECTION (Amending WSR 15-01-106, filed 12/18/14, effective 1/18/15)

WAC 458-20-177 Sales of motor vehicles, campers, and trailers to nonresident consumers. (1) **Introduction.** This rule applies to any sale of a vehicle to a consumer who is not a resident of the state, including nonresident military personnel temporarily stationed in Washington. The rule describes the different business and occupation (B&O) and retail sales tax consequences that result from vehicle sales to nonresidents, particularly the sales tax exemption provided by RCW 82.08.0264. It also describes the documentation a seller must retain to demonstrate that a sale is exempt.

(a) For information on use tax liability associated with vehicles, see WAC 458-20-178(~~(r)~~) Use tax and the use of tangible personal property.

(b) For the collection of use tax by county auditors and the department of licensing, see WAC 458-20-17802 Collection of use tax by county auditors and department of licensing—Measure of tax.

(c) For sales of vehicles to Indians or Indian tribes and required documentation, see WAC 458-20-192(~~(r)~~) Indians—Indian country.

(d) Questions regarding vehicle licensing or registration requirements should be directed to the department of licensing.

(2) (~~(What is a)~~) **Definition of "vehicle."**(~~(?)~~) For the purposes of this rule, a "vehicle" is any vehicle of a type that may be lawfully licensed under chapter 46.16A RCW for operation on a public highway in this state, except that the term does not include any machinery and implements for use in conducting a farming activity subject to RCW 82.08.0268. The term "vehicle" includes, but is not limited to, a car, truck, camper, trailer, bus, motorhome, and motorcycles equipped for road use. It does not include farm tractors, bicycles, mopeds, motorized scooters, snowmobiles, or vehicles that are manufactured for exclusively off-road use.

(3) (~~(What are the)~~) **Tax consequences when a vehicle sold to a nonresident is delivered in-state**(~~(?)~~). A sale of a vehicle to a nonresident where the vehicle is delivered in-state is exempt from retail sales tax if the sale meets the requirements of RCW 82.08.0264. In all other cases where the vehicle is delivered to the buyer in this state, the retail sales tax applies and must be collected at the time of sale, unless otherwise exempt by law. The mere fact that the buyer may be or claims to be a nonresident or that the buyer intends to, and actually does, use the vehicle in some other state does not, by itself, entitle the buyer to the exemption. In any case where the seller licenses or registers the vehicle in Washington on the buyer's behalf, the retail sales tax applies.

In computing the B&O tax liability of persons engaged in the business of selling vehicles, no deduction is allowed for a sale made to a nonresident for use outside this state if the nonresident buyer takes delivery in Washington. This is true even if the buyer is entitled to an exemption from the retail sales tax.

(a) **Exemption requirements.** If a vehicle is delivered within this state to a nonresident buyer, retail sales tax does not apply if the vehicle is purchased for use outside this state and, immediately upon delivery, the vehicle:

(i) Is removed from the state under the authority of a trip permit issued by the department of licensing pursuant to RCW 46.16A.320

or any agency of another state that has authority to issue similar permits; or

(ii) Is registered and licensed in the state of the buyer's residence, will not be used in this state more than three months, and will not be legally required to be registered and licensed in this state.

If the vehicle bears Washington state license plates, the seller must remove the Washington plates before delivering the vehicle and retain evidence of that removal to avoid liability for collection and payment of the retail sales tax.

(b) **Seller obligations; documentation required from natural person buyers.** The seller must retain the following documents, which must be made available upon request by the department of revenue (department):

(i) A copy of the buyer's currently valid out-of-state driver's license or other official picture identification issued by a jurisdiction other than Washington state;

(ii) A copy of any one of the following documents, on which there is an out-of-state address for the buyer:

(A) A current residential rental agreement;

(B) A property tax statement from the current or previous year;

(C) A utility bill, dated within the previous two months;

(D) A state income tax return from the previous year;

(E) A voter registration card;

(F) A current credit report; or

(G) Any other document determined by the department to be acceptable, with buyer's street address, such as:

(I) A bank statement issued within the previous two months;

(II) A government check issued within the previous two months;

(III) A pay check issued within the previous two months;

(IV) Mortgage documents of current personal residence;

(V) Current vehicle insurance card;

(VI) Letter or other documentation issued by the postmaster within the previous two months; or

(VII) Other government document issued within the previous two months;

(iii) A completed witnessed declaration in the form designated by the department, signed by the buyer, and stating that the buyer's purchase meets the requirements of this section (buyer's affidavit); and

(iv) A seller's certification, in the form designated by the department, that either a vehicle trip permit was issued or the vehicle was immediately registered and licensed in another state as required by RCW 82.08.0264.

To comply with these requirements, the seller must retain a properly completed buyer's affidavit and seller's certificate (in-state delivery). See the department's web site dor.wa.gov for affidavit and certificate forms.

(c) **Seller obligations; documentation required from corporate buyers.** Sales tax does not apply to sales of vehicles to nonresident corporations for use outside of this state. The sale must meet the requirements stated in (b) of this subsection pertaining to qualified nonresident natural persons. Some documents listed in (b)(ii) of this subsection, such as residential rental agreement, voter registration card, or mortgage documents for a personal residence, do not pertain to corporate purchases. In addition to the applicable requirements in (b) of this subsection, the seller must establish that the corporation is the purchaser (i.e., paid for by corporate check and registered in the corporation's name). A distinction exists between the corporation

and its employees or officers. The exemption still applies, for example, when an officer or employee, purchasing on behalf of the corporation, is a Washington resident when all other requirements are met.

A corporation with places of business in one or more other states outside Washington (~~((is))~~) may qualify as a "nonresident" for purposes of RCW 82.08.0264. A Washington corporation purchasing a vehicle for out-of-state use by a nonresident salesperson or out-of-state office qualifies for this exemption if the vehicle leaves the state with a valid one-transit permit or with foreign state license plates attached at the time of delivery, and nonresident affidavits are completed. If the vehicle is subsequently used in Washington, use tax is due on the value of the vehicle at the time of its first use in Washington. See the department's web site dor.wa.gov for affidavit and certificate forms.

(d) (~~((What are the))~~) **Consequences for noncompliance((?))**.

(i) Any seller that makes sales without collecting the tax (~~((to))~~) from a person who does not provide the documents required under (b) of this subsection, and any seller who fails to retain the documents required under (b) of this subsection for the period prescribed by RCW 82.32.070 is personally liable for the amount of tax due.

(ii) Any seller that makes sales without collecting the retail sales tax pursuant to RCW 82.08.0264 and who has actual knowledge that the buyer's documentation required by (b) of this subsection is fraudulent is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the buyer and the seller are liable for any penalties and interest assessable under chapter 82.32 RCW.

(4) (~~((What are the tax consequences when))~~) **Tax consequences of a vehicle sold to a nonresident ((is)) and delivered out-of-state((?))**.

A sale of a vehicle to a nonresident where the seller delivers the vehicle out-of-state is exempt from retail sales tax. If the vehicle is delivered to the buyer outside the state, the seller may also deduct the sale amount from the gross proceeds of sales for B&O tax purposes. The deductible amount must be included in the gross income reported on the excise tax return and then deducted on the return to determine the amount of taxable income. The deduction must be identified on the deduction detail page of the return as an "interstate and foreign sales" deduction.

(a) **Requirements.** If a vehicle is delivered outside the state to a nonresident buyer, retail sales tax does not apply if:

(i) The seller, as required by the contract of sale, delivers possession of the vehicle to the buyer at a point outside Washington; and

(ii) The vehicle is not licensed or registered in this state. If the vehicle bears Washington state license plates, the seller must remove the Washington plates before delivery and retain evidence of that removal to avoid liability for collection and payment of the retail sales tax.

(b) **Seller obligations; documentation.** The seller must properly document the following facts:

(i) The buyer's out-of-state address;

(ii) The vehicle is not licensed or registered in this state or the Washington state license plates have been removed from the vehicle before delivery;

(iii) Under the terms of the sales agreement, the seller is required to deliver the vehicle to the buyer at a point outside this state; and

(iv) The out-of-state delivery was actually made by the seller or by a common carrier acting as the seller's agent.

To comply with these requirements, the seller must retain a properly completed buyer's certificate and seller's certificate (out-of-state delivery). The seller's certificate must be signed by the person who actually delivers the vehicle to the buyer at the out-of-state location and may be completed only after delivery occurs.

(5) ~~((What))~~ **Forms ~~((should be used))~~ required to document an exempt sale((?))**. Where the vehicle is delivered determines which two properly completed documents: "Buyer's Affidavit" and "Seller's Certificate In-State Delivery," or "Buyer's Certificate Out-of-State Delivery" and "Seller's Certificate Out-of-State Delivery" are necessary to substantiate exempt sales to nonresidents. Do not send the documents to the department; keep them as part of the seller's permanent records for five years. Without this documentation, claims that a transaction was exempt from tax will be disallowed.

Copies of the forms can be obtained:

- From the department's web site at dor.wa.gov or
- By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, Washington 98504-7478

Documents in substantially the same form as the department's forms will be accepted in lieu of the department's documents.

(a) **In-state delivery**. A sale with in-state delivery requires a completed buyer's affidavit and seller's certificate-in-state delivery.

(b) **Delivery out-of-state by seller**. A sale with out-of-state delivery by a seller requires a completed buyer's certificate and seller's certificate-out-of-state.

(c) **Delivery out-of-state by common carrier**. When a vehicle is delivered outside the state by common carrier acting as the seller's agent, the seller must retain:

(i) Evidence that the vehicle's license plates (if licensed in Washington) were removed; and

(ii) A signed copy of the bill of lading issued by the carrier. The bill of lading must show the seller as the consignor and indicate that the carrier agrees to transport the vehicle to a point outside the state; or

(iii) A seller's certificate out-of-state delivery signed by the person who delivers the vehicle and provides the name of the hauling company.

(6) ~~((What are a))~~ **Seller's obligations to verify a buyer's statements on nonresidency((?))**.

(a) The seller must exercise a reasonable degree of care in accepting statements regarding a buyer's nonresidence. If delivery occurs in-state, the seller must examine and retain a copy of at least one form of documentary evidence showing the buyer's out-of-state residence. Lack of good faith on the part of the seller or lack of the exercise of the degree of care required is indicated, for example, in the following circumstances:

(i) If the seller knows that the buyer is living in Washington;

(ii) If the buyer gives a Washington address for the purpose of financing the purchase of the vehicle;

(iii) If, at the time of sale, arrangements are made for future servicing of the vehicle in the seller's shop and a Washington address or telephone number is shown for the shop customer; or

(iv) If the seller has ready access to any other information that discloses that the buyer is a resident of Washington.

(b) ~~((What if the department))~~ **Questions about the authenticity of the information provided by the buyer((?)).** If the department has information indicating the buyer is a Washington resident, or if the addresses for the buyer shown on the documentation provided under subsection (3)(b) or (c) of this rule are not the same, the department may contact the buyer to verify the buyer's eligibility for the exemption provided by RCW 82.08.0264. If the department subsequently determines the buyer was not eligible for an exemption, the department will pursue collection of the retail sales tax from the buyer. The seller will not be liable for the retail sales tax except as provided in subsection (3)(d) of this rule.

(7) ~~((Do))~~ **Military personnel ((qualify)) qualifications for the nonresident exemptions((?)).** A member of the armed services who is temporarily stationed in Washington is presumed to be a nonresident, unless that person was a resident of this state when enlisted or inducted. This presumption does not apply to a civilian employee of the armed services. ~~((Nonetheless,))~~ A sale to a nonresident member of the armed forces must meet all of the statutory requirements for a retail sales tax exemption or B&O tax deduction. If a vehicle sold to a member of the armed forces will remain in Washington for more than three months, retail sales tax is due on the sale, even if the vehicle is registered in the home state of the armed forces member.

(a) **Military temporary license.** In addition to the exemptions provided under RCW 82.08.0264, a member of the armed forces may alternatively qualify for the retail sales tax and use tax exemptions provided by RCW 46.16A.340 if the member obtains a forty-five day nonresident military temporary permit from the department of licensing and satisfies the requirements of RCW 46.16A.340.

(b) **Additional documentation required.** In addition to the documentation otherwise required by this rule, for a sale to a member of the armed forces a seller must retain a copy of military orders showing that the buyer:

(i) Is temporarily stationed in Washington and will leave within three months of the date of purchase; or

(ii) Is permanently reassigned to a new duty station outside Washington and will leave within three months of the date of purchase.

(c) **Military personnel of NATO-member nations.** Pursuant to treaty, a member of the armed forces of any NATO-member nation who is stationed in Washington is considered to be a nonresident for purposes of the RCW 82.08.0264 retail sales tax exemption. The buyer must meet all otherwise applicable requirements for exemption. In addition, the seller must retain proof of the buyer's military assignment in Washington as a member of a NATO-member nation's armed forces.

(8) ~~((Are))~~ **Sales to residents of noncontiguous states are exempt from Washington retail sales tax((?)).** RCW 82.08.0269 exempts purchases of tangible personal property from the retail sales tax if the property is purchased for use in states, territories, and possessions of the United States that are not contiguous with any other state. However, the exemption only applies if, as a necessary incident to the contract of sale, the seller delivers the property to the purchaser or

the purchaser's designated agent at the usual receiving terminal of the carrier selected to transport the goods, under such circumstances that it is reasonably certain that the goods will be transported directly to a destination in a noncontiguous state, territory, or possession.

RCW 82.08.0269 applies to the sale of motor vehicles when the requirements stated above are met. Therefore, in addition to being exempt from retail sales tax under RCW 82.08.0264 (discussed above), a sale of a motor vehicle to a resident of a noncontiguous state, territory, or possession may qualify for exemption under RCW 82.08.0269. If so, the sale is exempt from retail sales tax but does not qualify for a B&O tax deduction. For more information on the requirements of the RCW 82.08.0269 exemption, including the documentation requirements, see WAC 458-20-193, Inbound and outbound interstate sales of tangible personal property.

(9) ~~((Are sales to nonresidents of this state exempt from))~~ **Washington retail sales tax((?)) exemption for qualified nonresidents.** RCW 82.08.0273 ~~((exempts))~~ provides an exemption, in the form of a remittance from the department, of the state portion of the retail sales tax on purchases of tangible personal property ((from the retail sales tax)), digital goods, and digital codes, if the purchaser is a resident of another state or possession or a province of Canada that does not impose a retail sales tax or use tax of three percent or more. That statute does not apply to purchases of vehicles. Because RCW 82.08.0264 more specifically applies to the sale of vehicles, it takes precedence over RCW 82.08.0273. A nonresident of this state may purchase and take delivery of a vehicle in Washington free of retail sales tax only if the person meets the requirements of RCW 82.08.0264. For sales to residents of noncontiguous states, territories, and possessions see RCW 82.08.0269.

(10) **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 other situations must be determined after a review of all facts and circumstances. In each example concluding that the sale qualifies for a retail sales tax and/or B&O tax exemption, the Dealer must retain the documents required in subsection (3) (b) or (c) of this rule.

(a) Buyer purchases a vehicle from Dealer. Buyer provides identification indicating that Buyer is a resident of California and provides California license plates for the vehicle. However, Buyer also states that he intends to use the vehicle in the state of Washington for four months before returning to California. Buyer does not qualify for a sales tax exemption because Buyer will use the vehicle for more than three months in the state.

(b) Buyer provides proof of residency in Idaho; there are no contrary facts regarding Buyer's residency. Buyer completes the buyer's affidavit, stating that the vehicle is for use out-of-state. Buyer obtains and uses a trip permit issued under authority of RCW 46.16A.320 to remove the vehicle from Washington. The Dealer completes a seller's certificate and certifies that the Dealer removed the Washington license plates before delivering the vehicle to Buyer. This sale qualifies for the retail sales tax exemption but not the B&O tax deduction.

(c) Buyer is a Washington resident, employed by out-of-state Corporation X. On behalf of Corporation X, Buyer purchases and accepts in-state delivery of a vehicle from Dealer. The vehicle will be used as a company car out-of-state and will not be used or garaged in Washington. Payment is made by corporate check. Buyer provides a trip per-

mit for transport of the vehicle out of Washington. This sale qualifies for the retail sales tax exemption (but not for the B&O tax deduction) notwithstanding the Washington residency of its employee.

(d) Buyer is a resident of Alaska and purchases a vehicle from Dealer in Washington. The sales contract requires Dealer to deliver the vehicle to Buyer in Anchorage, Alaska. Before shipping the vehicle, Dealer removes the vehicle's Washington state license plates and retains a photocopy of the plates as evidence of the removal. Seller ships the vehicle to Alaska by common carrier. Seller retains a signed copy of the bill of lading, indicating the Seller as consignor and the Buyer as consignee. This sale qualifies for the retail sales tax exemption and a B&O tax deduction.

(e) Buyer is a resident of Alaska and purchases a vehicle from Dealer in Washington. Dealer delivers the vehicle to the Buyer at dockside in Seattle to be shipped to Anchorage, Alaska by common carrier. Before shipping the vehicle, Dealer removes the vehicle's Washington state license plates and retains a photocopy of the plates as evidence of the removal. Dealer retains the exemption certificate and documentation required by WAC 458-20-193. This sale qualifies for the retail sales tax exemption provided by RCW 82.08.0269 but not for a B&O tax deduction.

(f) Buyer is a member of the armed forces and provides a copy of her orders showing that she is temporarily stationed in Washington. Before entering military service, buyer resided in another state. Buyer purchases a vehicle from Dealer and licenses it in her home state, but intends to keep the vehicle in this state for over three months. This sale does not qualify for any exemption or deduction. If the vehicle were to be removed from the state within three months, the sale would qualify for the RCW 82.08.0264 retail sales tax exemption but not for a B&O tax deduction.

(g) Buyer owns homes in Washington and Arizona, spending summers in Washington and winters in Arizona. In October, Buyer purchases a vehicle from Dealer, asserting that he will immediately drive the vehicle to Arizona and license it in that state. Buyer presents an Arizona driver's license for identification and provides a trip permit to remove the vehicle from Washington. Dealer is aware that Buyer lives in Washington for a significant portion of each year. In such a case, the sale would not qualify for the retail sales tax exemption. Under these facts, Buyer is not a nonresident of Washington for tax purposes because the buyer has dual residency in Washington and Arizona ((for tax purposes)).

(h) Buyer purchases a motorcycle from Dealer in Vancouver, Washington. The motorcycle is equipped for use on public highways. Buyer provides an Oregon driver's license and asserts that the motorcycle will be licensed in Oregon. Buyer also states that the motorcycle will only be used outside of Washington. Buyer places the motorcycle in the back of a truck for transport to Oregon. This sale does not qualify for any exemption or deduction. To qualify for the sales tax exemption, RCW 82.08.0264 requires the Buyer to obtain a trip permit or provide license plates from another state before removing the vehicle from Washington.

(11) **Buyer obligations when claiming exemption.** It is the buyer's responsibility to provide the seller with valid identification that entitles the buyer to purchase a motor vehicle, trailer, or camper exempt from retail sales tax as provided by RCW 82.08.0264.

(a) A buyer making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identifica-

tion to a seller, to purchase without paying retail sales tax a motor vehicle, trailer, or camper is guilty of perjury under chapter 9A.72 RCW.

(b) Any buyer making tax exempt purchases under RCW 82.08.0264 by displaying proof of identification not ((~~his or her~~)) the buyer's own, or counterfeit identification, with intent to violate the provisions of RCW 82.08.0264 is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

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