



EXPEDITED RULE MAKING

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

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FILED

DATE: November 06, 2019

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WSR 19-23-001

Agency: Department of Revenue

Title of rule and other identifying information: (describe subject) WAC 458-20-189 Sales to and by the state of Washington and municipal corporations, including counties, cities, towns, school districts, and fire districts.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Department is amending WAC 458-20-189 to reflect 2019 legislation that expands a sales and use tax exemption for personal property sold between political subdivisions to include sales or uses of personal property as a result of a merger, and creates a new sales and use tax exemption or sales or uses of personal property made under contractual consolidations of political subdivisions in which the taxpayer that originally paid the sales or use tax continues to benefit from the personal property.

Reasons supporting proposal: The rule is being amended to incorporate legislation from 2019 (SB 5337).

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

Statute being implemented: RCW 82.08.0278 and RCW 82.12.0274.

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

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

- Private
 Public
 Governmental

Name of agency personnel responsible for:

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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

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 amendments to WAC 458-20-189 only incorporate statutory provisions and are not interpretive. The amendments are needed to reflect 2019 legislative changes made to RCW 82.08.0278 and RCW 82.12.0274.

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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AND RECEIVED BY (date) January 21, 2020

Date: November 06, 2019

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Signature:



AMENDATORY SECTION (Amending WSR 17-08-076, filed 4/3/17, effective 5/4/17)

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 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, fire districts, and other special districts.

(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 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, 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.

(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, but is not limited to, water distribution, light and power, public transportation, and sewer collection.

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

(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) **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 on sales to the state of Washington, its departments and institutions, or to municipal corporations.

(b) **Sales by the state of Washington.** The state of Washington and its departments and institutions 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 on amounts received from activities that are exclusively governmental under RCW 82.04.419. 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 for fingerprinting and environmental impact statements; and fees for on-street metered parking and on-street parking permits. Income received from taxes, fines, penalties, and interest 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 exempt from the B&O tax on grants received from the state of Washington, or the United States government under RCW 82.04.418.

(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 receiving income, however designated, from any enterprise activity for which a specific charge is made are subject to the B&O tax.

(A) When determining whether an activity is an enterprise activity, user fees 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.

Example 1. A city determines that 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 to operate the facility was four hundred thousand dollars, which includes direct operating costs, direct and indirect overhead, 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.

(B) An enterprise activity that is operated as part of a governmental or nonenterprise activity is subject to the B&O tax.

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 operate under a single separate budget. The community center and the neighborhood centers are operated

as a part of the overall parks and recreation 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 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 are compared to the total costs of operating the three centers to determine whether they, as a whole, are an enterprise activity. Had each neighborhood center operated under individual budgets, the user fees generated by each neighborhood center would be compared to the costs of operating that center.

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

(a) Municipal corporations engaging in enterprise activities are subject to the B&O tax as follows:

(i) **Service and other activities tax.** Amounts received from, but not limited to, event admission fees for concerts and exhibits, admission charges to a zoo or wildlife park, fees charged for the use of lockers 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 activities B&O tax 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 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. 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, school districts, educational districts, or library or library district facilities solely for their own use under RCW 82.04.600.

(iv) **Wholesaling tax.** The wholesaling B&O tax applies to the gross proceeds 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. Sellers must obtain a reseller permit from their customer to document the wholesale nature of any sale as provided in WAC 458-20-102 (Reseller permits).

(v) **Retailing tax.** Amounts received from, but not limited to, user fees for off-street parking and garages, 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.

(b) Persons selling products 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 applies to retail sales made to the state of Washington, including its departments and institutions, and to municipal corporations 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 must collect retail sales tax on all retail sales of tangible personal property or retail services unless a specific exemption applies. Retail sales tax must be collected and remitted even if the sale is exempt from the retailing B&O tax.

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.

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 are retail sales and are subject to the retail sales tax.

Example 5. State Agency sells office equipment to County. State Agency is making a retail sale 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 purchase of the office 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 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 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 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 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 an entire or complete integral section of operating property of a publicly or privately owned public utility to the state of Washington or to a municipal corporation 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, merger, or incorporation of any part of the territory of one municipal corporation by another under RCW 82.08.0278.

(f) Sales to one municipal corporation by another municipal corporation according to the terms of a contractual consolidation under which the taxpayers that originally paid a sales or use tax continue to benefit from the use of the personal property.

(g) Sales to the state of Washington or a municipal corporation 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))~~ (h) Sales to the United States. 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)) (i) Charges for physical fitness classes, such as aerobics classes, provided by local governments under RCW 82.08.0291. For more information on charges for physical fitness classes provided by local governments, refer to the department's website at dor.wa.gov.

(7) **Application of the use tax.**

(a) The state of Washington, including its departments and institutions, and municipal corporations are required to pay the 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) If the state of Washington or its departments and institutions purchase tangible personal property or retail services to resell to any other department or institution of the state of Washington, or to consume as an ingredient or component part in manufacturing or producing for use, a new article for resale to any other department or institution of the state of Washington, the transaction is a retail purchase and subject to retail sales or use tax.

(d) 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. This value must correspond as nearly as possible to the gross proceeds from retail sales of similar products. (See WAC 458-20-112 and 458-20-134 on value of products and commercial or industrial use, respectively.)

Example 6. A municipal corporation that operates a print shop and 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 82.04.600. 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.

(i) Counties and cities are not subject to use tax 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 on the value of that article even though the state is not subject to the B&O tax.

Example 7. State Agency manufactures office furniture to resell to other departments or institutions of the state of Washington. State Agency 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, 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 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. When computing and remitting use

tax upon the value of manufactured furniture, State Agency may reduce the value by any retail sales or use taxes it previously remitted on materials incorporated into that furniture. A department or institution purchasing office furniture from State Agency must remit use tax 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)(e) of this rule.)

(e) A use tax exemption 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.

(f) A use tax exemption applies to the use of personal property of one municipal corporation by another municipal corporation directly or indirectly arising out of, or resulting from, the annexation, merger, or incorporation of any part of the territory of one municipal corporation by another.

(g) A use tax exemption applies to the use of the personal property of one municipal corporation by another municipal corporation according to the terms of a contractual consolidation under which the taxpayers that originally paid a sales or use tax continue to benefit from the use of the personal property.

(8) Application of the public utility tax.

(a) Persons receiving income subject to 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 or its departments and institutions from providing public utility services.

(c) Municipal corporations operating public service businesses should refer to the rules mentioned in subsection (1)(a) of this rule to determine their public utility tax liability.