



# EXPEDITED RULE MAKING

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

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STATE OF WASHINGTON  
FILED

DATE: July 01, 2019

TIME: 6:52 AM

WSR 19-14-074

**Agency:** Department of Revenue

**Title of rule and other identifying information:** (describe subject) WAC 458-20-193C Imports and exports – Sales of goods from or to persons in foreign countries.

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** WAC 458-20-193C is being amended to incorporate language from SSB 5581 (2019), which limits the B&O tax exemption for imports to wholesale sales of tangible personal property when the wholesale sale is (1) between a parent company and its wholly-owned subsidiary; or (2) the sale of unroasted coffee beans. WAC 458-20-193C is also being amended to modernize the layout and design of the rule.

**Reasons supporting proposal:** The rule is being amended to incorporate legislation from 2019 (SSB 5581, relating to imports).

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

**Statute being implemented:** RCW 82.04.610.

**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.

**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) September 2, 2019

**Date:** July 1, 2019

**Name:** Kevin Dixon

**Title:** Program Manager

**Signature:**



AMENDATORY SECTION (Amending WSR 86-07-005, filed 3/6/86)

**WAC 458-20-193C Imports and exports—Sales of goods from or to persons in foreign countries.**

((WAC 458-20-193 deals with interstate and foreign commerce and is published in four separate parts:

- Part A. Sales of goods originating in Washington to persons in other states.
- Part B. Sales of goods originating in other states to persons in Washington.
- Part C. Imports and exports: Sales of goods from or to persons in foreign countries.
- Part D. Transportation, communication, public utility activities, or other services in interstate or foreign commerce.

~~Part C.~~

**~~Foreign Commerce)~~**

(1) **Introduction.** This rule explains the application of the business and occupation (B&O) and retail sales taxes to sales of imports and exports. For purposes of this rule, the terms "good," "goods," "article," and "articles" mean "tangible personal property."

(2) **Other rules that may apply.** Readers may want to refer to other rules for additional information, including:

(a) WAC 458-20-178 Use tax and the use of tangible personal property.

(b) WAC 458-20-193 Interstate sales of tangible personal property.

(3) **Definitions.** The following definitions apply throughout this rule:

(a) "Export" means tangible personal property that originates within the taxing jurisdiction of this state destined for delivery to a purchaser in a foreign country. Exports do not include "ship's stores."

(i) Export sales require as a necessary incident of the contract of sale, the seller to deliver the tangible personal property by agreement:

(A) To the buyer at a foreign destination; or

(B) To a carrier consigned to and for transportation to a foreign destination; or

(C) To the buyer at shipside or aboard the buyer's vessel or other vehicle of transportation under circumstances where it is clear that the process of exportation of the tangible personal property has begun.

(ii) Exportation will not necessarily be deemed to have begun if goods are merely in storage awaiting shipment, even though there is reasonable certainty that the goods will be exported.

(iii) The intention to export, as evidenced, for example, by financial and contractual relationships, does not indicate "certainty of

export" if the goods have not commenced their journey abroad; there must be an actual entrance of the goods into the export stream.

(iv) In all circumstances there must be a certainty of export and the process of export must have started. It is not important that title and/or possession of the goods pass in this state so long as delivery is made directly into the export channel.

(b) "Foreign commerce" means ((that)) commerce ((which)) that involves the purchase, sale or exchange of property and its transportation from a state or territory of the United States to a foreign country, or from a foreign country to a state or territory of the United States.

((Imports. An import is an article which comes from a foreign country (not from a state, territory or possession of the United States) for the first time into the taxing jurisdiction of a state.

Taxation of such goods is impermissible while the goods are still in the process of importation, i.e., while they are still in import transportation. Further, such goods are not subject to taxation if the imports are merely flowing through this state on their way to a destination in some other state.

Exports. An export is an article which originates within the taxing jurisdiction of the state destined for a purchaser in a foreign country. Thus ships stores and supplies are not exports.

### **Business and Occupation Tax**

#### **Wholesaling and Retailing.))**

(c) "Import" means tangible personal property in import transportation.

(i) An "import" includes goods that are still in the process of importation, i.e., while they are still in import transportation. Except as provided in RCW 82.04.460, property is in the process of import transportation from the time the property begins its transportation at a point outside of the United States until the time that the property is delivered to the buyer in this state. Property is also in the process of import transportation if it is merely flowing through this state on its way to a destination in some other state or country.

(ii) An "import" does not include property that is no longer in the process of import transportation.

(d) "Ship's stores" means the supplies and equipment required for the operation and upkeep of a ship.

#### **(4) Business and occupation tax - Wholesaling and retailing.**

(a) Imports. Sales of imports ((by an importer or his agent are not taxable and a deduction will be allowed with respect to the sales of such goods, if at the time of sale such goods are still in the process of import transportation. Immunity from tax does not extend: (1) To the sale of imports to Washington customers by the importer thereof or by any person after completion of importation whether or not the goods are in the original unbroken package or container; nor (2) to the sale of imports subsequent to the time they have been placed in use in this state for the purpose for which they were imported; nor (3) to sales of products which, although imports, have been processed or handled within this state or its territorial waters.

Exports. A deduction is allowed with respect to export sales when as a necessary incident to the contract of sale the seller agrees to, and does deliver the goods (1) to the buyer at a foreign destination; or (2) to a carrier consigned to and for transportation to a foreign destination; or (3) to the buyer at shipside or aboard the buyer's vessel or other vehicle of transportation under circumstances where it

is clear that the process of exportation of the goods has begun, and such exportation will not necessarily be deemed to have begun if the goods are merely in storage awaiting shipment, even though there is reasonable certainty that the goods will be exported. The intention to export, as evidenced for example, by financial and contractual relationships does not indicate "certainty of export" if the goods have not commenced their journey abroad; there must be an actual entrance of the goods into the export stream.

In all circumstances there must be (a) a certainty of export and (b) the process of export must have started.

It is of no importance that title and/or possession of the goods pass in this state so long as delivery is made directly into the export channel.)) are subject to the B&O tax, except for the following wholesale sales of imports:

(i) A sale of unroasted coffee beans; or

(ii) A sale between a parent company and its wholly owned subsidiary.

(b) **Exports.** Sales of exports are not subject to the B&O tax.

(i) To be tax exempt ((upon export sales)), the seller must document the fact that ((he)) it placed the goods into the export process. ((That)) This may be shown by the seller obtaining and keeping ((in his files)) any ((one)) of the following ((documentary evidence)) documentation:

((1)) (A) A bona fide bill of lading in which the seller is shipper/consignor and by which the carrier agrees to transport the goods sold to the foreign buyer/consignee at a foreign destination; or

((2)) (B) A copy of the shipper's export declaration, showing that the seller was the exporter of the goods sold; or

((3)) (C) Documents consisting of:

((a)) (I) Purchase orders or contracts of sale which show that the seller is required to get the goods into the export stream, e.g., "f.a.s. vessel"; and

((b)) (II) Local delivery receipts, tripsheets, waybills, warehouse releases, etc., reflecting how and when the goods were delivered into the export stream; and

((c)) (III) When available, United States export or customs clearance documents showing that the goods were actually exported; and

((d)) (IV) When available, records showing that the goods were packaged, numbered, or otherwise handled in a way which is exclusively attributable to goods for export.

(ii) Thus, where the seller actually delivers the goods into the export stream and retains such records as above set forth, the B&O tax does not apply. It is not sufficient to show that the goods ultimately reached a foreign destination; but rather, the seller must show that ((he)) it was required to, and did put the goods into the export process.

(iii) Sales of tangible personal property, of ((ships)) ship's stores, and supplies to operators of steamships, etc., are not ((deductible)) exempt irrespective of the fact that the property will be consumed on the high seas, or outside the territorial jurisdiction of this state, or by a vessel engaged in conducting foreign commerce.

However, ((on July 1, 1985, a statutory business and occupation)) under RCW 82.04.433, a B&O tax deduction ((became effective)) is available for sales of fuel for consumption outside the territorial waters of the United States by vessels used primarily in foreign commerce. ((In order))

(A) To qualify for this deduction sellers must take a certificate signed by the buyer or the buyer's agent stating: The name of the vessel for which the fuel is purchased; that the vessel is primarily used in foreign commerce; and, the amount of fuel purchased which will be consumed outside of the territorial waters of the United States. Sellers must exercise good faith in accepting such certificates and are required to add their own signed statement to the certificate to the effect that to best of their knowledge the information contained in the certificate is correct.

(B) The following is an acceptable certificate form:

**Foreign Fuel Exemption Certificate**

SELLER: ..... VESSEL: .....  
WE HEREBY CERTIFY that this purchase of       (kind and amount of product)       from       (seller)       will be consumed as fuel outside the territorial waters of the United States by the above-named vessel. We further certify that said vessel is used primarily in foreign commerce and that none of the fuel purchased will be consumed within the territorial boundaries of the State of Washington.  
DATED ....., ((+9)) .....  
20... .....  
Purchaser  
.....  
Purchaser's Agent  
By: .....  
.....  
Title or Office

(C) When a seller takes a completed certification such as this ~~((is taken))~~ in good faith ~~((by the seller))~~, the sale is exempt ~~((of business and occupation))~~ from the B&O tax, whether made at wholesale or retail, and even though the fuel is delivered to the buyer in this state.

(5) **Business and occupation tax - Extracting((7)) and manufacturing.** Persons engaged in ~~((these))~~ extracting or manufacturing activities in Washington ~~((and who))~~ that transfer or make delivery of articles produced to points outside the state are subject to ~~((business))~~ the B&O tax under the extracting or manufacturing classification and are not subject to ((business)) the B&O tax under the retailing or wholesaling classification. See also WAC 458-20-135 and 458-20-136. The activities taxed occur entirely within the state, are inherently local, and are conducted prior to the commercial journey. The tax is measured by the value of products as determined by the selling price. See WAC 458-20-112. It is immaterial that the value so determined includes an additional increment of value because the sale occurs outside the state.

(6) **Retail sales tax.** The same principles apply to the retail sales tax as are set forth for the business and occupation tax ~~((above))~~ described in subsections (4) and (5) of this rule, except that certain statutory exemptions may apply. (See WAC 458-20-174, 458-20-175, 458-20-176, 458-20-177, 458-20-238 and 458-20-239.)

(7) **Use tax.** The use tax is imposed upon the use, including storage, of all tangible personal property acquired for any use or consumption in this state unless specifically exempt by statute.