



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: May 01, 2020

TIME: 2:30 PM

WSR 20-10-069

Agency: Department of Revenue

☒ Original Notice

☐ Supplemental Notice to WSR _____

☐ Continuance of WSR _____

☒ Preproposal Statement of Inquiry was filed as WSR 20-07-112 ; 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 458-20-243 titled, Litter Tax

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
June 10, 2020	11:00am	6400 Linderson Way SW Tumwater, Washington 98501	Due to COVID-19 precautions, this meeting may be held telephonically only. The Department will announce if the hearing changes to telephone-only.

Date of intended adoption: 6/17/20 (Note: This is NOT the effective date)

Submit written comments to:

Name: Katie Koontz

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

Email: Katieko@dor.wa.gov

Fax: 360-534-1529

Other:

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 has received comments and questions regarding the administration of WAC 458-20-243, particularly as it relates to clarifying business use, and the consumption of items on the premises for certain business types. New examples are being added to the rule to help address these concerns. The Department intends to provide clarity in these areas, and may update other parts of the rule based on comments received

Reasons supporting proposal: Businesses that engage in the activities subject to this rule will find the updated rule easier to understand and more informative regarding the litter tax.																			
Statutory authority for adoption: : RCW 82.32.300, RCW 82.01.060(2), and RCW 82.19.030																			
Statute being implemented: Chapter 82.19 RCW																			
Is rule necessary because of a: <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div> Federal Law? Federal Court Decision? State Court Decision? </div> <div> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </div> </div> 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			<input type="checkbox"/> Private <input type="checkbox"/> Public <input checked="" type="checkbox"/> Governmental																
Name of agency personnel responsible for: <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 30%;">Name</th> <th style="width: 40%;">Office Location</th> <th style="width: 20%;">Phone</th> </tr> </thead> <tbody> <tr> <td>Drafting:</td> <td>Katie Koontz</td> <td>6400 Linderson Way SW, Tumwater, WA</td> <td>(360)-534-1529</td> </tr> <tr> <td>Implementation:</td> <td>John Ryser</td> <td>6400 Linderson Way SW, Tumwater, WA</td> <td>(360) 534-1605</td> </tr> <tr> <td>Enforcement:</td> <td>John Ryser</td> <td>6400 Linderson Way SW, Tumwater, WA</td> <td>(360) 534-1605</td> </tr> </tbody> </table>					Name	Office Location	Phone	Drafting:	Katie Koontz	6400 Linderson Way SW, Tumwater, WA	(360)-534-1529	Implementation:	John Ryser	6400 Linderson Way SW, Tumwater, WA	(360) 534-1605	Enforcement:	John Ryser	6400 Linderson Way SW, Tumwater, WA	(360) 534-1605
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Is a school district fiscal impact statement required under RCW 28A.305.135?			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																
If yes, insert statement here: <div style="margin-top: 20px;"> The public may obtain a copy of the school district fiscal impact statement by contacting: Name: Address: Phone: Fax: TTY: Email: Other: </div>																			
Is a cost-benefit analysis required under RCW 34.05.328? <div style="margin-top: 10px;"> <input type="checkbox"/> Yes: A preliminary cost-benefit analysis may be obtained by contacting: Name: Address: Phone: Fax: TTY: Email: Other: </div> <div style="margin-top: 10px;"> <input checked="" type="checkbox"/> No: Please explain: This rule is not a significant legislative rule as defined by RCW 34.05.328 </div>																			

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. While the proposed rule draft for WAC 458-20-243 does not meet the exemptions in chapter 34.05 RCW, the amendments do not impose more than minor costs on businesses, as defined in RCW 19.85.020(2), as the amendments do not propose any new requirements not already provided for in statute. Most of the information incorporated into this rule regarding litter tax is described in RCW 82.19.010 and RCW 82.19.020, so the department used this information to clarify the application of litter tax through added examples and clarified definitions using definitions already in department statutes and rules.

☐ 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: May 01, 2020

Name: Atif Aziz

Title: Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 06-17-187, filed 8/23/06, effective 9/23/06)

WAC 458-20-243 Litter tax. (1) **Introduction.** Chapter 82.19 RCW imposes a litter tax on manufacturers, wholesalers, and retailers of certain products. Litter tax is imposed independently of the business and occupation (B&O) tax and retail sales and use taxes. RCW 82.19.010. This section provides detailed information about the litter tax, including the measure of the tax, the products to which the tax applies, and specific exemptions from the tax.

(2) **Tax measure.** For manufacturers, the measure of the tax is the value of products listed in subsection (4) of this section, including by-products manufactured in this state. For wholesalers and retailers, the measure of the tax is the gross proceeds of sales within this state of the products listed in subsection (4) of this section. In the case of publishers of newspapers and magazines, the measure of the tax is the gross proceeds of sales, and does not include advertising income.

Litter tax is imposed on subsequent sales of the same goods from the manufacturer to the wholesaler, from the wholesaler to the retailer, and from the retailer to the consumer, if the goods are listed in subsection (4) of this section, and the sales are not specifically exempt by law.

(a) **Value of products and gross proceeds of sales.** For purposes of the litter tax, "value of products" and "gross proceeds of sales" have the same meanings as defined in RCW 82.04.450 and 82.04.070, respectively. See also WAC 458-20-112 for more information regarding "value of products."

(b) **Alternative method for grocery stores and drugstores.** (~~Where it is impractical to separate products that are and are not subject to litter tax, an~~) Instead of requiring grocery stores and drugstores to account for all items that are and are not subject to litter tax separately, the following alternative methods ((is)) are allowed((-)):

(i) Persons operating drugstores may report and pay litter tax measured by fifty percent of total sales in lieu of separately accounting for sales of nondrug drugstore sundry products. ((+)) See subsection (4)(n) of this section for information about what constitutes nondrug drugstore sundry products.((+)) For purposes of this rule, "drug" has the same meaning as provided in RCW 82.08.0281.

(ii) Persons operating grocery stores may report and pay the litter tax measured by ninety-five percent of total sales in lieu of separately accounting for grocery and nongrocery products sold. ((+)) See subsection (4)(b) of this section for information about what constitutes grocery products.((+))

(3) **When do I report and pay litter tax?** The frequency of reporting and paying litter tax coincides with the reporting periods of taxpayers for their B&O tax. For example, a wholesaler who reports B&O tax monthly would also report any litter tax liability on the monthly return. For more information on tax reporting frequency, see WAC 458-20-22801 Tax reporting frequency(~~(Forms)~~).

(4) **What products are subject to litter tax?** Litter tax applies to the manufacture or sale of products (~~(in the product categories)~~) listed in this subsection, unless a specific exemption applies. Litter tax applies whether these products are sold packaged, unpackaged, or in recyclable containers. See subsection (5) of this section for the

litter tax exemptions available for the manufacture or sale of products in these categories.

(a) **Food for human or pet consumption.** Food for human or pet consumption is any substance, except drugs, where the chief, general use is for human or pet nourishment, regardless of whether the substance is sold in a consumable form. Food for human or pet consumption includes candy, chewing gum, condiments, packaged or unpackaged meat, bulk foods, shellfish, and ingredients used in processing food for human or pet consumption such as industrial chocolate, grain, barley, or hops. This category includes sales of meals, snacks, lunches, or other food and beverages at restaurants, drive-ins, snack bars, taverns, or by concessionaires.

(b) **Groceries.** Groceries are all products sold by persons in a place of business selling food and food ingredients, as defined in RCW 82.08.0293, for off-premises consumption, but excluding drugs, building materials, clothing, furniture, and appliances.

(c) **Cigarettes and tobacco products.** Cigarettes and tobacco products include all of the products subject to the excise taxes imposed by chapters 82.24 and 82.26 RCW.

(d) **Soft drinks and carbonated waters.** Soft drinks are nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume. Carbonated waters are nonalcoholic beverages, containing carbon dioxide, that do not contain natural or artificial sweeteners.

(e) **Beer and other malt beverages.** Beer and other malt beverages are all beverages defined as beer or malt liquor by ((Title 66)) RCW 66.04.010 or rules of the Washington state liquor ((control)) and cannabis board.

(f) **Wine.** Wine includes all alcoholic beverages defined as wine in ((Title 66)) RCW 66.04.010 or rules of the Washington state liquor ((control)) and cannabis board, but does not include "spirits" as defined in RCW 66.04.010.

(g) **Newspapers and magazines.** Newspapers and magazines are all daily and periodical publications, including real estate guides, vehicle trader publications, free community newspapers, and the like.

(h) **Household paper and paper products.** Household paper and paper products are materials or substances made into sheets or leaves from natural organic or synthetic fibrous material for home or other personal use. Household paper and paper products include products or articles made from such sheets or leaves for home or other personal use, such as toilet tissue, paper cups, plates, napkins, cards, wrapping paper, stationery, personal banking checks or deposit slips, computer printer or copier paper, and the like. Household paper and paper products do not include paper products manufactured or sold for business or commercial use. Business and commercial use requires that the paper products be consumed by the business or used by the business in the manufacturing of articles, substances, or commodities.

(i) **Glass containers.** Glass containers are articles made wholly or in substantial part of processed silicates that can be, or are, used to hold other things within themselves. Glass containers include only those containers that are sold with, and that contain, another product or products otherwise subject to litter tax, or containers that are produced so that they can later contain and be sold with another product or products otherwise subject to litter tax. Glass containers do not include containers that are produced to be sold at re-

tail as empty reusable containers, such as drinking glasses, vases, and the like.

(j) **Metal containers.** Metal containers are articles made wholly or in substantial part of materials such as iron, steel, tin, aluminum, copper, zinc, lead, silver and any alloys thereof; and that can be, or are, used to hold other things within themselves. In addition, metal containers include only those containers that are sold with, and that contain, another product or products otherwise subject to litter tax, or containers that are produced so that they can later contain and be sold with another product or products otherwise subject to litter tax. Metal containers do not include containers that are produced to be sold at retail as empty reusable containers, such as pots and pans, or metal containers made for transporting other products.

(k) **Plastic or fiber containers made of synthetic material.** Plastic or fiber containers made of synthetic material will be referred to as plastic or fiber containers for purposes of this subsection (4)(k). Plastic or fiber containers are articles that can be, or are, used to hold other things within themselves, and that are made of synthetically produced ethylene derivatives, resins, waxes, adhesives, or polymers, or made by synthesis of fiber materials with adhesives, polymers, waxes, resins, or other materials. Plastic or fiber containers include containers made of paper, pasteboard, or cardboard ~~((in which the container materials consist))~~ consisting of fibrous substances synthesized with other materials. Synthetic material is ~~((material that is))~~ produced by ~~((synthesis, which is))~~ the process of making or building up by a composition or union of simpler parts or elements, as distinguished from the process of extraction or refinement. Plastic or fiber containers include only those containers that are sold with, and that contain, another product or products otherwise subject to litter tax, or containers that are produced so that they can later contain and be sold with another product or products otherwise subject to litter tax. Plastic or fiber containers do not include containers that are produced to be sold at retail as empty reusable containers.

(l) **Cleaning agents.** Cleaning agents are all soaps, detergents, solvents, or other cleansing substances used for cleaning buildings, places, persons, animals, or other things. Cleaning agents include packaged products and products sold in bulk form, as well as products sold in recyclable containers.

(m) **Toiletries.** Toiletries are all substances such as soap, powder, shampoo, cologne, perfume, cosmetics, toothpaste, and the like, used in connection with personal dressing or grooming.

(n) **Nondrug drugstore sundry products.** Nondrug drugstore sundry products are all products sold by persons in the business of selling prescription drugs to consumers, except the following: Drugs, building materials, clothing, furniture, and appliances. ~~((For purposes of this section, "drug" has the same meaning as defined in RCW 82.08.0281.))~~

(5) **Exemptions.** This subsection provides information about products listed under subsection (4) of this section that are exempt from litter tax as provided by RCW 82.19.050. A person claiming an exemption from the litter tax must maintain adequate records to substantiate the exempt status of the product being manufactured or sold.

The litter tax does not apply to the following categories of products:

(a) **Products for use and consumption out-of-state.** The manufacture or sale of products for use and consumption outside the state(~~+~~).

(b) **Agricultural products exempt from B&O tax.** The value of products or gross proceeds of the sales by farmers exempt from tax under RCW 82.04.330((+)).

(c) **Certain wholesale sales by qualified grocery distribution co-operatives.** The sale of products for resale by a qualified grocery distribution cooperative to customer-owners of the grocery distribution cooperative. For the purposes of this section, "qualified grocery distribution cooperative" and "customer-owner" have the meanings given in RCW 82.04.298((+)).

(d) **Food or beverages sold for ((indoor)) on-premises consumption.** The sale of food or beverages by retailers that are sold solely for immediate consumption indoors at the seller's place of business ((+)), at a deck or patio at the seller's place of business, or ((indoor)) at an eating area that is contiguous to the seller's place of business((+)).

(e) **Certain retail sales by caterers.** ((Effective July 24, 2005,)) The sale of prepared food or beverages by caterers where the food or beverages are to be served for immediate consumption in or on individual, nonsingle use containers at premises occupied or controlled by the customer. For the purposes of this section, "prepared food" has the same meaning as provided in RCW 82.08.0293. "Nonsingle use container" and "caterer" have the meanings given in RCW 82.19.050.

(6) **Examples.** Examples included in this rule identify a number of facts and then state a general conclusion; they should be used only as a general guide. The tax consequences of all situations must be determined after a review of all the facts and circumstances.

(a) **Example 1.** Tina's Burgers is a restaurant that operates in a food court. Tina's Burgers offers the option to dine-in or take the food to-go. Dine-in sales are for customers who will be immediately consuming their food purchases within the food court dining area. To-go sales will be taken from the food court area to be consumed off of the premises. If a customer orders a burger and indicates they will dine-in, the purchase is not subject to litter tax. If a customer indicates that they will take the burger to-go, the purchase is subject to litter tax. To qualify for the exemption, Tina's Burgers must maintain adequate records demonstrating which sales were dine-in, and which were to-go.

(b) **Example 2.** ABC Cinema sells popcorn and other food and beverage items at its concession stand. Customers purchase the concession items to consume at the theater while watching movies. The purchases from the theater's concession stand are not subject to litter tax.

(c) **Example 3.** Prairie Oaks Golf Course has a restaurant on site called Chipper's. The golf course does not own the restaurant. Chipper's has a dining area, but also has servers driving golf carts through the golf course to serve patrons as they golf. Sales for immediate consumption in the restaurant dining area are not subject to litter tax, but sales occurring on the golf course are subject to litter tax because the food is not being consumed on the premises of the restaurant.