



EXPEDITED RULE MAKING

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

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STATE OF WASHINGTON
FILED

DATE: October 06, 2020

TIME: 10:33 AM

WSR 20-20-114

Agency: Department of Revenue

Title of rule and other identifying information: (describe subject) WAC 458-20-249 Artistic and Cultural Organizations

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Department of Revenue intends to update and amend WAC 458-20-249 to incorporate 2020 legislation, Chapter 139, Laws of 2020 (Engrossed Senate Bill 5402). In addition, the rule has been updated with formatting changes to improve clarity.

Reasons supporting proposal: The Washington Legislature enacted statutory changes in 2020 to RCW 82.04.4327 and RCW 82.04.4328 to simplify administration that necessitated an amendment to the rule. The rule is also being updated to provide guidance, clarity and for easier reference.

Statutory authority for adoption: RCW 82.01.060; RCW 82.32.300;

Statute being implemented: RCW 82.04.4327; RCW 82.04.4328

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:

	Name	Office Location	Phone
Drafting:	Melinda Mandell	6400 Linderson Way SW Tumwater	(360) 534-1584
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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): No substantive changes were made to the existing rule other than to update and simplify it to facilitate administration.

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) December 07, 2020

Date: October 06, 2020	Signature: 
Name: Atif Aziz	
Title: Rules Coordinator	

AMENDATORY SECTION (Amending WSR 86-07-006, filed 3/6/86)

WAC 458-20-249 Artistic or cultural organizations. (~~For purposes of business and occupation tax deduction and certain retail sales tax and use tax exemptions, RCW 82.04.4328 expressly defines the term "artistic or cultural organizations" in pertinent part as follows:~~

~~". . . the term)~~ (1) **Introduction.** This rule explains deductions and exemptions from Washington business and occupation tax, retail sales tax and use tax as applied to artistic and cultural organizations. Readers may refer to the following for additional information.

RCW 82.04.4327 Deductions—Artistic and cultural organizations—Income from business activities.

RCW 82.04.4328 Artistic or cultural organization defined.

RCW 82.08.031 Exemptions—Sales to artistic or cultural organizations of certain objects acquired for exhibition or presentation.

RCW 82.12.031 Exemptions—Use by artistic or cultural organizations of certain objects.

WAC 458-20-169 Nonprofit organizations.

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

(2) **Definitions.**

(a) "Artistic or cultural organization" means an organization (~~which~~) that is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs (~~(, . . .)~~) for viewing or attendance by the general public (~~(-)~~) and meets all of the following requirements:

(i) The organization (~~(must be)~~) is a not-for-profit corporation under chapter 24.03 RCW (~~(and)~~);

(ii) The organization is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization (~~(or by a corporation sole under chapter 24.12 RCW. In addition, to qualify for deduction or exemption from taxation . . . the corporation shall satisfy the following conditions:~~

(a)):

(iii) No part of (~~(its)~~) the organization's income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(~~(b)~~) (iv) Salary or compensation paid to (~~(its)~~) the organization's officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state;

(~~(c)~~) (v) Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted (~~(and,)~~);

(vi) On the liquidation, dissolution, or abandonment by the corporation, assets of the corporation may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

(~~(d)~~) (vii) The corporation must be duly licensed or certified when licensing or certification is required by law or regulation;

(~~(e)~~) (viii) The amounts received that qualify for exemption must be used for the activities for which the exemption is granted;

(~~(f)~~) (ix) Services must be available regardless of race, color, national origin, or ancestry; and

~~((g))~~ (x) The director of revenue ~~((shall))~~ must have access to its books in order to determine whether the corporation is exempt from taxes.

~~((2))~~ (b) The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to:

~~((a))~~ (i) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

~~((b))~~ (ii) A musical or dramatic performance or series of performances; or

~~((c))~~ (iii) An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject. ("

~~Effective July 1, 1985, artistic or cultural organizations, as defined herein, are not subject to business and occupation tax upon amounts derived from conducting any business activities whatever. Formerly, a business and occupation tax deduction was available only for amounts received by such organizations from the United States and its instrumentalities or the state and local government entities (RCW 82.04.4322); certain manufacturing activities (RCW 82.04.4324); and tuition fees for artistic or cultural education programs (RCW 82.04.4326). Under current law, however, the deduction is unrestricted and applies to all activities conducted by such qualifying organizations.)~~ (3) Business and occupation tax deduction. In computing tax under RCW 82.04.4327, an artistic or cultural organization may deduct the following from the measure of tax:

(a) All amounts received by the artistic or cultural organization; and

(b) The value of articles manufactured by the artistic or cultural organization solely for use by the organization in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs for attendance or viewing by the general public.

(4) Retail sales tax.

(a) Artistic or cultural organizations ~~((which make any))~~ that charge ~~((s))~~ for goods or services ~~((which are))~~ included in the definition of "retail sale" under RCW 82.04.050, must collect and report the retail sales tax ~~((thereon))~~. No sales tax exemption is available for sales by such organizations.

(b) Such organizations are exempt ~~((of))~~ from paying retail sales tax ~~((upon))~~ on their purchases of certain "objects" for the purpose of exhibition or presentation to the general public if the objects are:

~~((1))~~ (i) Objects of art;

~~((2))~~ (ii) Objects of cultural value;

~~((3))~~ (iii) Objects to be used in the creation of a work of art, other than tools; or

~~((4))~~ (iv) Objects to be used in displaying art objects or presenting artistic or cultural exhibitions or performances. (RCW 82.08.031)

(c) The term "objects" ~~((is deemed to))~~ means items of tangible personal property. It does not include professional or commercial services rendered by third parties. Where ~~((, however,))~~ certain services are performed which are merely incidental to sales of tangible personal property, e.g., designing playbills or altering stage curtains which are then sold to qualifying organizations, the total charge ~~((therefore))~~ will be exempt.

(d) Charges for materials, equipment, and services related to repair, maintenance, or replacement of buildings or structures are not exempt. Thus, e.g., theater seats, aisle carpeting, air conditioning systems, painting of interior or exterior of buildings, and the like are not tax exempt "objects."

~~((Under Washington law))~~ (e) Exempt sales include rentals of exempt objects. Examples of objects ~~((which may be purchased by))~~ that qualifying artistic or cultural organizations may purchase without payment of retail sales tax are:

~~((a+))~~ (i) Tickets, programs, signs, posters, fliers, and playbills printed for particular displays or performances; scenery, costumes, stage ~~((+))~~ props, scrims, and materials for their construction;

~~((b+))~~ (ii) Stage lights, filters, control panels, color medium, stage drapes, sets, set paint, gallery exhibition materials, risers, display platforms, and materials for their construction;

~~((e+))~~ (iii) Sheet music, recordings, musical instruments and musical supplies for the staging of displays and performances;

~~((d+))~~ (iv) Movie projectors, films, sound systems, video and sound equipment and supplies ~~((and))~~, computer hardware and standard, prewritten software directly used exclusively in the staging of performances or actual display of art objects.

(f) Examples of objects ~~((which may be purchased by))~~ that qualifying artistic or cultural organizations may purchase, ~~((upon))~~ on which the retail sales tax must be paid are:

~~((a+))~~ (i) Supplies and equipment for clerical support, including bulk tickets for general use, stationery, typewriters, copy machines, and general office supplies;

~~((b+))~~ (ii) Theater seats, lobby furniture, carpeting, vending machines, and general supplies for audience or patrons' convenience and use;

~~((e+))~~ (iii) Shipping and packing materials, crates, boxes, dunnage, labels, tags, and container-related items for transfer or storage of exempt objects;

~~((d+))~~ (iv) Sewing machines and other durable equipment used to prepare, repair, and maintain exempt objects (such items are deemed to be "tools," rather than exempt objects);

~~((e+))~~ (v) Theater or building lighting and utility fixtures and systems, and computer hardware and software not directly and exclusively used in staging performances or actually displaying art objects.

(g) Qualified artistic and cultural organizations may obtain the tax exemptions by providing their suppliers with a written statement in essentially the following form:

I, (buyer's name), hereby confirm that the items purchased on (date of purchase), without payment of retail sales tax, from (seller's name) are all objects of art or cultural value or to be used in the creation of such objects or in displaying art objects or presenting artistic or cultural exhibitions or performances.

(signature of authorized purchaser)

for: (name of organization)

(registration no. of organization)

(h) Vendors who accept such certifications in good faith ~~((will be excused from the responsibility of collecting and remitting))~~ are not required to collect and remit sales tax on such sales.

(6) Use tax. Under RCW 82.12.031, the use tax does not apply to the use of any objects ~~((for the purposes explained earlier in this rule, and upon which the retail sales tax would be exempt if))~~ that would be exempt from sales tax had the objects ((were)) been purchased in this state. The use tax applies ~~((upon))~~ to all other items of tangible personal property ~~((used by))~~ that artistic or cultural organizations use upon which retail sales tax has not been paid.

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