

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

(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 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, the seller must document the fact that it placed the goods into the export process. This may be shown by the seller obtaining and keeping any of the following documentation:

(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

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

(C) Documents consisting of:

(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

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

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

(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 it was required to, and did put the goods into the export process.

(iii) Sales of tangible personal property, of ship's stores, and supplies to operators of steamships, etc., are not 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, under RCW 82.04.433, a B&O tax deduction is available for sales of fuel for consumption outside the territorial waters of the United States by vessels used primarily in foreign commerce.

(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, 20...
.....
Purchaser
.....
Purchaser's Agent
By:.....
.....
Title or Office

(C) When a seller takes a completed certification such as this in good faith, the sale is exempt 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 and manufacturing.** Persons engaged in extracting or manufacturing activities in Washington that transfer or make delivery of articles produced to points outside the state are subject to the B&O tax under the extracting or manufacturing classification and are not subject to 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 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.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 19-18-068, § 458-20-193C, filed 9/3/19, effective 10/4/19. Statutory Authority: RCW 82.32.300. WSR 86-07-005 (Order ET 86-3), § 458-20-193C, filed 3/6/86; WSR 83-07-033 (Order ET 83-16), § 458-20-193C, filed 3/15/83; Order ET 76-3, § 458-20-193C, filed 8/31/76; Order ET 70-3, § 458-20-193C (Rule 193 Part C), filed 5/29/70, effective 7/1/70.]