

WSR 24-14-148

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed July 3, 2024, 11:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-087.

Title of Rule and Other Identifying Information: New WAC 458-20-18201 Warehouse and grain elevators and distribution centers exemption—Remittance.

Hearing Location(s): On August 8, 2024, at 10:00 a.m. This meeting will be conducted over the internet/telephone. Please contact Barbara Imperio at BarbaraI@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: August 12, 2024.

Submit Written Comments to: Perry Stern, P.O. Box 47453, Olympia, WA 98504-7453, email PerryS@dor.wa.gov, fax 360-534-1606, by August 9, 2024.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New WAC 458-20-18201: The purpose of this rule-making effort is to provide information about the qualifying criteria, application, and documentation requirements for the retail sales and use tax exemptions provided in RCW 82.08.820 and 82.12.820, respectively.

Reasons Supporting Proposal: WAC 458-20-18201: This rule will provide information on filing and application requirements.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300.

Statute Being Implemented: RCW 82.04.280, 82.08.820, and 82.12.820.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Perry Stern, 6400 Linderson Way S.W., Tumwater, WA, 360-524-1588; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-531-1615.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The rule is not a significant legislative rule as defined by RCW 34.05.328.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose more-than-minor costs on taxpayers as it does not propose any requirements not already provided for in the statute. The proposed rule does not impose new fees, filing requirements, or recordkeeping guidelines that are not already established in the statute.

July 3, 2024
Brenton Madison
Rules Coordinator

OTS-5212.1

NEW SECTION**WAC 458-20-18201 Warehouse and grain elevators and distribution centers exemption—Remittance.****Part 1. General.**

(101) **Introduction.** Wholesalers or third-party warehouse owners that own or operate qualifying warehouses or grain elevators, and retailers who own or operate qualifying distribution centers, may be eligible for a limited sales/use tax exemption on qualifying construction costs and qualifying purchases of material-handling and racking equipment. The exemption is in the form of a remittance. See RCW 82.08.820 and 82.12.820. This rule provides details on the qualifying criteria for the exemption.

(102) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **"Construction"** means the actual construction of a warehouse or grain elevator that did not exist before the construction began. Construction also includes expansion, if the expansion adds at least 200,000 square feet of additional space to an existing warehouse or additional storage capacity of at least 1,000,000,000 bushels to an existing grain elevator. Construction does not include renovation, remodeling, or repair. Activities not involving actual construction do not fall within the definition of construction. For example, costs related to housing, meals, trailers, permit fees, insurance, bonds, dumpsters, etc., are not construction costs. Similarly, "actual" construction generally does not include activities in the preparation of building a warehouse or grain elevator. Thus, except for design and engineering activities, activities occurring prior to the issuance of a building permit do not constitute construction.

(b) **"Distribution center"** means a warehouse used exclusively by a retailer solely for the storage and distribution of finished goods to retail outlets of the retailer, i.e., to physical locations owned or operated by the retailer at which retail sales occur. Distribution center does not include any warehouse at which retail sales occur, and distribution centers are not used to fulfill retail orders directly to customers. RCW 82.08.820.

(c) **"Finished goods"** means tangible personal property intended for sale by a retailer or wholesaler. Finished goods do not include any of the following:

(i) Agricultural products stored by wholesalers, third-party warehouses, or retailers if the storage takes place on the land of the person who produced the agricultural product;

(ii) Logs, minerals, petroleum, gas, or other extracted products stored as raw materials or in bulk; or

(iii) Cannabis, useable cannabis, or cannabis-infused products. RCW 82.08.820.

(d) **"Grain elevator"** means a structure used for storage and handling of grain in bulk. RCW 82.08.820. The term "structure" as it relates to a grain elevator is not limited to a single building or edifice of a single foundation or footprint.

(e) **"Material-handling equipment and racking equipment"** means equipment in a warehouse or grain elevator used primarily (more than

50 percent of the time) to handle, store, organize, convey, package, or repackage finished goods. RCW 82.08.820. The term includes tangible personal property with a useful life of at least one year that becomes an ingredient or component part of the equipment, including repair and replacement parts. See subsection 203(a) of this rule for additional information about the types of costs related to material handling and racking equipment that do and do not qualify for this exemption.

(f) **"Material-handling equipment"** means equipment that physically moves tangible personal property and equipment used in the process of moving tangible personal property. The term generally includes, but is not limited to, the following:

(i) Conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists, mechanical arms, and robots;

(ii) Mechanized systems, including containers that are an integral part of the system, the purpose of which is to lift or move tangible personal property;

(iii) Automated handling, storage, and retrieval systems, including computers that control them, the purpose of which is to lift or move tangible personal property;

(iv) Forklifts and other off-the-road vehicles that are used to lift or move tangible personal property and that cannot be operated legally on roads and streets; and

(v) Equipment used to organize and track products, such as hand-held scanners and stand-alone scales used to organize goods by weight. In contrast, stand-alone scales used to weigh goods to determine postage are not material-handling equipment.

(g) **"Qualifying activity"** means the storage by a wholesaler of finished goods for wholesaling purposes, the storage by a third-party warehouse of another person's finished goods, or the storage by a retailer of its finished goods for the purpose of distributing the goods to retail outlets of the retailer.

(h) **"Racking equipment"** means equipment used to physically store tangible personal property. The term generally includes conveying systems, chutes, shelves, racks, bins, drawers, pallets, and other containers and storage devices that form a necessary part of the storage system. Examples of racking equipment include stand-alone tables, when the tables are used during packaging or storing finished goods; drawers, when used to handle, store, or organize finished goods; and refrigeration systems that are a necessary part of the storage system for finished goods that must be stored in a refrigerated state. Dock doors and dock levelers are not racking equipment.

(i) **"Third-party warehouse"** means a person taxable under the B&O tax classification in RCW 82.04.280 (1)(d) for persons operating cold storage warehouses or storage warehouses. RCW 82.08.820.

(j) **"Warehouse"** means a single enclosed building or structure in which finished goods are stored. RCW 82.08.820. A warehouse building or structure may have more than one storage room and more than one floor. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are considered part of the warehouse, as are loading docks and other such space attached to the building and used for handling of finished goods. A guard shack or any external building is not considered part of the warehouse. Landscaping and parking lots are not considered part of the warehouse. A storage yard is not a warehouse, nor is any building in which manufacturing takes place.

Part 2. Remittance Eligibility.

(201) **Qualifying owner/operator.** The remittance is available only to the following types of businesses:

(a) A wholesaler that owns or operates a warehouse or a grain elevator;

(b) A third-party warehouser that owns or operates a warehouse or a grain elevator; or

(c) A retailer that owns or operates a distribution center.

(202) **Effect of nonqualifying activities.**

(a) **Distribution centers.** A distribution center may qualify for the exemption only if the retailer that operates the distribution center uses it solely for a qualifying activity. For example, a retailer that operates its distribution center for its own retail outlets and also fulfills retail orders directly to consumers does not qualify for the exemption because the distribution center is not used exclusively for the qualifying activity of storing and distributing finished goods to the retailer's retail outlets.

(b) **Warehouses.**

(i) A single warehouse accommodating multiple business activities may qualify for the exemption if none of the activities is excluded by statute and at least one of the activities carried on at the warehouse is a qualifying activity, provided that at least 200,000 square feet of the warehouse is dedicated to the qualifying activity.

(ii) A warehouse that accommodates both qualifying and nonqualifying activities must be able to demonstrate that it meets the 200,000 square feet requirement in order to receive the exemption. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are included within the 200,000 square feet warehouse space measure. The department determines eligibility under this section based on information provided by the taxpayer and through audit and other administrative records.

Examples.

(A) **Example 1.** Company A operates a 250,000 square foot warehouse that it uses to store goods of third parties. Company A also fulfills retail orders directly to its retail customers. Company A designates 200,000 square feet of the warehouse exclusively to its third-party warehousing activity, i.e., storing goods of third parties. The other 50,000 square feet of Company A's warehouse has separately stored goods, and Company A exclusively uses those goods (not the goods in the other 200,000 square feet) to fulfill Company A's retail sales. Company A's warehouse may qualify for the exemption because 200,000 square feet of its warehouse space is dedicated for use solely as a third-party warehouse, which is a qualifying activity, and retail order fulfillment is not a prohibited use of warehouses under RCW 82.08.820.

(B) **Example 2.** Company B operates a 500,000 square foot warehouse that it uses to store and distribute finished goods from the warehouse to its retail outlets. Company B also uses the warehouse to fulfill orders directly to its retail customers. Company B dedicates 300,000 square feet of the warehouse to storing the goods to be distributed to its retail outlets, and the remaining 200,000 square feet is segregated and dedicated exclusively to fulfillment of retail orders. Company B's warehouse is a distribution center; retail fulfillment is a disqualifying activity if it occurs in a retail distribution center. See subsection (102)(b) of this rule. Therefore, Company B's distribution center does not qualify for the exemption.

(C) **Example 3.** Company C operates a 500,000 square foot warehouse that it uses to store finished goods for wholesale. Company C also

uses the warehouse to fulfill orders directly to its retail customers. The wholesale goods and the products for fulfilling retail orders are intermingled throughout the warehouse. Company B's warehouse does not qualify for the exemption because it does not dedicate 200,000 square feet of the warehouse's physical space exclusively to the wholesaling activity, the qualifying activity.

(203) **Payment of sales/use tax required.** The remittance is available only to an eligible business that has paid sales tax levied under RCW 82.08.020, or use tax levied under RCW 82.12.020, for the following types of costs:

(a) Material-handling equipment and racking equipment, and labor and services given in respect to installing, repairing, cleaning, altering, or improving the equipment. For example, costs of renting material-handling and racking equipment, without an operator, qualifies for the remittance if the equipment is primarily used to handle, store, organize, convey, package, or repackage finished goods. However, the cost of renting equipment used to install material-handling and racking equipment does not qualify because the charge for the rental equipment is not a charge for labor or services and the equipment used in installation is not itself material-handling and racking equipment. Costs for maintaining material-handling and racking equipment do not qualify for the exemption.

(b) Materials incorporated in the construction of a warehouse or grain elevator, and labor and services given in respect to that construction. Thus, construction costs may include flooring, walls, HVAC, roofing, and windows. Labor costs for pouring a foundation and installing a roof for a warehouse or grain elevator also may qualify as construction costs. However, costs for soil testing, soil amendments, excavation, and earth moving activities performed before the excavation of a foundation are not qualifying construction costs.

(204) **Remittance amount.** The amount of the remittance or credit available to an eligible person is based on the state share of sales tax paid or state share of use tax paid (or both, see RCW 82.08.020 for the state sales and use tax rate), computed as follows:

(a) For grain elevators with bushel capacity of at least 1,000,000 but less than 2,000,000, the remittance is equal to 50 percent of the amount of state sales or use tax paid for:

(i) Qualifying materials incorporated as an ingredient or component of the grain elevator, and labor and services rendered in respect to the grain elevator's construction; and

(ii) Qualifying material-handling equipment and racking equipment, and labor and services given in respect to installing, repairing, cleaning, altering, or improving the equipment.

(b) For grain elevators with bushel capacity of 2,000,000 or more, and for warehouses and distribution centers with at least 200,000 square feet of space dedicated exclusively to a qualifying activity, the remittance is equal to:

(i) 100 percent of the amount of state sales and use tax paid for qualifying materials incorporated as an ingredient or component of the structure, and labor and services rendered in respect to the structure's construction; and

(ii) 50 percent of the amount of state sales and use tax paid for qualifying material-handling equipment and racking equipment, and labor and services given in respect to installing, repairing, cleaning, altering, or improving the equipment.

Part 3. Application for Tax Remittance.

(301) **General application information.** The department determines eligibility for the exemption remittance in this section based on information provided by the buyer and through audit and other administrative records.

(a) An application and required documentation for a tax exemption remittance must be submitted quarterly.

(b) The department will send the approved exempted amount to the business by the end of the calendar quarter following the quarter the application was submitted.

(c) While not required, applicants are encouraged to submit the application and applicable documentation electronically through the MyDOR portal.

(302) **Documentation needed to verify eligibility.** Applicants must provide a completed Warehouse Tax Incentive Remittance application that corresponds to their qualifying activity. In addition to a completed application, supporting documentation is also required.

(a) Required documentation will depend on the applicant's qualifying activity and may include, but is not limited to, the following:

(i) Blueprints identifying the building location and the size of the facility;

(ii) Building permits associated with the foundation and the structure;

(iii) Proof of invoice and sales tax payments (copies of checks, bank statements for ACH payments, certification of use/deferred sales tax paid);

(iv) Completed electronic spreadsheet detailing purchase invoices and payments;

(v) For lessors, a copy of the lease agreement stating that the economic benefit of the remittance is passed to the tenant in the form of reduced rent; and

(vi) Any other items requested by the department to substantiate the applicant's claim for the remittance.

(b) Applicants are encouraged to file substantiation documents at the time of filing the application. However, once an application is filed, the taxpayer must provide sufficient substantiation to support the claim for remittance before the department can determine whether the claim is valid. The department will notify the taxpayer if additional substantiation is required. The taxpayer must provide the necessary substantiation within 90 days after the notice is sent, unless the documentation is under the control of a third party not affiliated with or under the control of the taxpayer. If the documentation is under the control of an unaffiliated third party, the taxpayer will have 180 days to provide the documentation.