WSR 23-17-036
EXPEDITED RULES
DEPARTMENT OF HEALTH
(Podiatric Medical Board)
[Filed August 9, 2023, 10:16 a.m.]

Title of Rule and Other Identifying Information: Substance abuse monitoring program language updates for podiatric physicians. WAC 246-922-400, 246-922-405, 246-922-410, and 246-922-415. The podiatric medical board (board) is proposing amendments to rules regarding health profession monitoring programs to update language changes made by SSB 5496 (chapter 43, Laws of 2022).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 5496 updated terminology, definitions, and references for podiatric physicians in RCW 18.22.250. The changes made by these rules reflect the changes in law which will provide consistency. There are no anticipated impacts beyond the updates to terms and definitions. Changes include removing the term "impaired" and replacing "substance abuse" with "substance use disorder."

Reasons Supporting Proposal: The proposed rules make technical amendments to conform existing rule language with the changes made in SSB 5496. Changes include removing the term "impaired" and replacing "substance abuse" with "substance use disorder." The proposed changes will align the rules with currently accepted language for substance use disorders and related monitoring programs.

Statutory Authority for Adoption: RCW 18.22.015; and SSB 5496 (chapter 43, Laws of 2022).

Statute Being Implemented: SSB 5496 (chapter 43, Laws of 2022).

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

Name of Proponent: Department of health, podiatric medical board, governmental.

Name of Agency Personnel Responsible for Drafting: Tommy Simpson III, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4910; Implementation and Enforcement: U. James Chaney, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4910.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed amendments align the rules with the new statutory language.

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 Tommy Simpson III, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4910, fax 360-236-2901, email https://fortress.wa.gov/doh/policyreview, podiatric@doh.wa.gov, AND RECEIVED BY October 23, 2023.

August 9, 2023

U. James Chaney
Executive Director
Podiatric Medical Board

OTS-4291.4

AMENDATORY SECTION (Amending WSR 94-14-082, filed 7/5/94, effective 8/5/94)

WAC 246-922-400 Intent of substance abuse monitoring. It is the intent of the legislature that the podiatric medical board seek ways to identify and support the rehabilitation of podiatric physicians and surgeons where practice or competency may be impaired due to ((~~the abuse of or dependency upon drugs or alcohol~~)) an applicable impairing health condition. The legislature intends that these ((~~practitioners~~)) podiatric physicians be treated so that they can return to or continue to practice podiatric medicine and surgery in a way which safeguards the public. The legislature specifically intends that the podiatric medical board establish an alternate program to the traditional administrative proceedings against podiatric physicians and surgeons.

In lieu of disciplinary action under RCW 18.130.160, if the podiatric medical board determines that the unprofessional conduct may be the result of ((~~substance abuse or dependency~~)) an applicable impairing health condition, the board may refer the licensee to a physician health program or a voluntary substance ((~~abuse~~)) use disorder monitoring program approved by the board.

AMENDATORY SECTION (Amending WSR 94-14-082, filed 7/5/94, effective 8/5/94)

WAC 246-922-405 Definitions used relative to ((~~substance abuse~~)) monitoring of applicable impairing health conditions. ((~~(1) "Approved~~)) The definitions in this section apply throughout WAC 246-922-400 through 246-922-415 unless the context clearly requires otherwise.

(1) "Aftercare" and "continuing care" means that period of time after intensive treatment that provides the podiatric physician and the podiatric physician's family with group, or individualized counseling sessions, discussions with other families, ongoing contact and participation in self-help groups, and ongoing continued support of treatment program staff.

(2) "Contract" is a comprehensive, structured agreement between the recovering podiatric physician and the monitoring program wherein the podiatric physician consents to comply with the monitoring program and the required components for the podiatric physician's recovery activity.

(3) "Drug" means a chemical substance alone or in combination with other drugs, including alcohol.

(4) "Impaired podiatric physician" means a podiatric physician and surgeon who is unable to practice podiatric medicine and surgery

with judgment, skill, competence, or safety due to an impairing health condition.

(5) "Impairing health condition" means a mental or physical health condition that impairs or potentially impairs the podiatric physician's ability to practice with reasonable skill and safety which may include a substance use disorder characterized by the inappropriate use of either alcohol or other drugs, or both to a degree that such use interferes in the functional life of the licensee, as manifested by personal, family, physical, emotional, occupational (professional services), legal, or spiritual problems.

(6) "Monitoring program" means an approved voluntary substance ((~~abuse/dependency~~)) use disorder monitoring program((~~"~~)) or ((~~"approved~~)) physician health monitoring program((~~" is a program~~)) that the board has determined meets the requirements of the law and rules established by the board according to the Washington Administrative Code which enters into a contract with podiatric ((~~practitioners~~)) physicians who have ((~~substance abuse/dependency problems~~)) an impairing health condition. The ((~~approved substance abuse~~)) monitoring program oversees compliance of the podiatric ((~~practitioner's~~)) physician's recovery activities as required by the board. ((~~Substance abuse~~)) Monitoring programs may provide either evaluation ((~~and/~~)) or treatment, or both to participating podiatric ((~~practitioners~~)) physicians.

((~~(2) "Impaired podiatric practitioner" means a podiatric physician and surgeon who is unable to practice podiatric medicine and surgery with judgment, skill, competence, or safety due to chemical dependence/substance abuse.~~

~~(3) "Contract" is a comprehensive, structured agreement between the recovering podiatric practitioner and the approved monitoring program wherein the podiatric practitioner consents to comply with the monitoring program and the required components for the podiatric practitioner's recovery activity.~~

~~(4) "Approved treatment facility" is a facility approved by the bureau of alcohol and substance abuse, department of social and health services.~~

~~(5) "Chemical dependence/substance abuse" means an illness/condition which involves the inappropriate use of alcohol and/or other drugs to a degree that such use interferes in the functional life of the licensee, as manifested by personal, family, physical, emotional, occupational (professional services), legal, or spiritual problems.~~

~~(6) "Drug" means a chemical substance alone or in combination with other drugs, including alcohol.~~

~~(7) "Aftercare/continuing care" means that period of time after intensive treatment that provides the podiatric practitioner and the podiatric practitioner's family with group, or individualized counseling sessions, discussions with other families, ongoing contact and participation in self-help groups, and ongoing continued support of treatment program staff.~~

~~(8) "Podiatric practitioner support group" is a group of podiatric practitioners and/or other health care professionals meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced facilitator in which participants may safely discuss drug diversion, licensure issues, return to work, and other professional issues related to recovery.~~

~~(9) "Twelve-step groups" are groups such as Alcoholics Anonymous, Narcotics Anonymous, and related organizations based on a philosophy~~

~~of anonymity, belief in a power greater than oneself, peer group association, and self-help.~~

~~(10) "Random drug screens" are laboratory tests to detect the presence of drugs of abuse or dependency in body fluids which are performed at irregular intervals not known in advance by the person to be tested. The collection of the body fluids must be observed by a treatment or health care professional or other board or monitoring program-approved observer.~~

~~(11) "Recovering" means that a chemically dependent podiatric practitioner is in compliance with a treatment plan of rehabilitation in accordance with criteria established by an approved treatment facility and an approved substance abuse monitoring program.~~

~~(12) "Rehabilitation" means the process of restoring a chemically dependent podiatric practitioner to a level of professional performance consistent with public health and safety.~~

~~(13) "Reinstatement" means the process whereby a recovering podiatric practitioner is permitted to resume the practice of podiatric medicine and surgery.~~))

(7) "Podiatric physician support group" is a group of either podiatric physicians or other health care professionals, or both meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced facilitator in which participants may safely discuss drug diversion, licensure issues, return to work, and other professional issues related to recovery.

(8) "Random drug screens" are laboratory tests to detect the presence of drugs of abuse or dependency in body fluids which are performed at irregular intervals not known in advance by the person to be tested. The collection of the body fluids must be observed by a treatment or health care professional or other board or monitoring program-approved observer.

(9) "Recovering" means that a podiatric physician with an impairing health condition is in compliance with a treatment plan of rehabilitation in accordance with criteria established by the monitoring program.

(10) "Rehabilitation" means the process of restoring a podiatric physician with an impairing health condition to a level of professional performance consistent with public health and safety.

(11) "Reinstatement" means the process whereby a recovering podiatric physician is permitted to resume the practice of podiatric medicine and surgery.

(12) "Treatment facility" means a facility recognized as such according to RCW 18.130.175(1).

(13) "Twelve-step groups" are groups such as Alcoholics Anonymous, Narcotics Anonymous, and related organizations based on a philosophy of anonymity, belief in a power greater than oneself, peer group association, and self-help.

AMENDATORY SECTION (Amending WSR 94-14-082, filed 7/5/94, effective 8/5/94)

WAC 246-922-410 Approval of ((~~substance abuse~~)) monitoring programs. The board ((~~will~~)) shall approve the monitoring program((~~(s) which will participate in~~)) to facilitate the recovery of podiatric ((~~practitioners~~)) physicians. The board ((~~will~~)) shall enter into a

contract with the ((~~approved substance abuse~~)) monitoring program((~~(s)~~)).

(1) ((~~An approved~~)) A monitoring program:

(a) May provide either evaluations ((~~and/~~)) or treatment, or both to the participating podiatric ((~~practitioners~~)) physicians;

(b) Shall enter into a contract with the podiatric ((~~practitioner~~)) physician and the board to oversee the podiatric ((~~practitioner's~~)) physician's compliance with the requirement of the program;

(c) Shall maintain records on participants;

(d) Shall be responsible for providing feedback to the podiatric ((~~practitioner~~)) physician as to whether treatment progress is acceptable;

(e) Shall report to the board any podiatric ((~~practitioner~~)) physician who fails to comply with the requirements of the monitoring program;

(f) Shall provide the board with a statistical report and financial statement on the program, including progress of participants, at least annually, or more frequently as requested by the board;

(g) Shall provide for the board a complete biennial audited financial statement;

(h) Shall enter into a written contract with the board and submit monthly billing statements supported by documentation((~~;~~)).

(2) ((~~Approved~~)) Monitoring program staff must have the qualifications and knowledge of ((~~both substance abuse/dependency~~)) impairing health conditions and the practice of podiatric medicine and surgery as defined in chapter 18.22 RCW to be able to evaluate:

(a) Drug screening laboratories;

(b) Laboratory results;

(c) Providers of ((~~substance abuse~~)) treatment for impairing health conditions, both individual and facilities;

(d) Podiatric ((~~practitioner~~)) physician support groups;

(e) Podiatric ((~~practitioners'~~)) physicians' work environment; and

(f) The ability of the podiatric ((~~practitioners~~)) physicians to practice with reasonable skill and safety.

(3) The program staff of the ((~~approved~~)) monitoring program may evaluate and recommend to the board, on an individual basis, whether a podiatric ((~~practitioner~~)) physician will be prohibited from engaging in the practice of podiatric medicine and surgery for a period of time and restrictions, if any, on the podiatric ((~~practitioner's~~)) physician's access to controlled substances in the workplace.

(4) The board shall provide the ((~~approved~~)) monitoring program ((~~board~~)) orders and agreements requiring any treatment, monitoring, ((~~and/~~)) or limitations on the practice of podiatric medicine and surgery for those participating in the program.

AMENDATORY SECTION (Amending WSR 94-14-082, filed 7/5/94, effective 8/5/94)

WAC 246-922-415 Participation in ((~~approved substance abuse~~)) monitoring programs. (1) The podiatric ((~~practitioner~~)) physician who has been investigated by the board may accept board referral into the ((~~approved substance abuse~~)) monitoring program. Referral may occur in lieu of disciplinary action under RCW 18.130.160 or as a result of a

board order as final disposition of a disciplinary action. The podiatric ((~~practitioner~~)) physician:

(a) Shall undergo a complete physical and psychosocial evaluation before entering the approved monitoring program. This evaluation is to be performed by a health care professional(s) with expertise in ((~~chemical dependency~~)) impairing health conditions;

(b) Shall enter into a contract with the ((~~approved substance abuse~~)) monitoring program to comply with the requirements of the program which ((~~shall~~)) may include, but not be limited to((~~: The podiatric practitioner~~)):

(i) ((~~Shall undergo intensive substance abuse~~)) Treatment of an impairing health condition by an approved treatment facility;

(ii) ((~~Shall agree~~)) An agreement to abstain from the use of all mind-altering substances, including alcohol, except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101. ((~~Said~~)) The prescriber shall notify the monitoring program of all drugs prescribed within ((~~fourteen~~)) 14 days of the date care was provided;

(iii) ((~~Must complete the~~)) Completion of any prescribed aftercare((~~/~~)) and continuing care program of the ((~~intensive~~)) treatment facility. This may include either individual ((~~and/~~)) or group psychotherapy, or both;

(iv) ((~~Must cause~~)) Directing the treatment counselor(s) and authorized prescriber(s) to provide reports to the appropriate monitoring program at specified intervals. Reports shall include treatment prognosis, goals, drugs prescribed, etc;

(v) ((~~Shall submit~~)) Submitting to random drug screening, with observed specimen collection, as specified by the ((~~approved~~)) monitoring program;

(vi) ((~~Shall attend~~)) Attending podiatric ((~~practitioner~~)) physician support groups facilitated by either health care professionals ((~~and/~~)) or twelve-step group meetings, or both as specified by the contract;

(vii) ((~~Shall comply~~)) Complying with specified employment conditions and restrictions as defined by the contract;

(viii) ((~~Shall sign~~)) Signing a waiver allowing the ((~~approved~~)) monitoring program to release information to the board if the podiatric ((~~practitioner~~)) physician does not comply with the requirements of the contract;

(c) Is responsible for paying the costs of the physical and psychosocial evaluation, ((~~substance abuse/dependency~~)) treatment of the impairing health condition, random urine screens, and other personal expenses incurred in compliance with the contract;

(d) May be subject to disciplinary action under RCW 18.130.160 and 18.130.180 if the podiatric ((~~practitioner~~)) physician does not consent to be referred to the ((~~approved~~)) monitoring program, does not comply with specified practice restrictions, or does not successfully complete the program.

(2) A podiatric ((~~practitioner~~)) physician who is not being investigated by the board or subject to current disciplinary action((~~,~~)) or not currently being monitored by the board for ((~~substance abuse or dependency~~)) an impairing health condition, may voluntarily participate in the ((~~approved substance abuse~~)) monitoring program without being referred by the board. Such voluntary participants shall not be subject to disciplinary action under RCW 18.130.160 and 18.130.180 for their ((~~substance abuse/dependency~~)) impairing health condition, and shall not have their participation made known to the board if they

continue to satisfactorily meet the requirements of the ((~~approved~~)) monitoring program. The podiatric ((~~practitioner~~)) physician:

(a) Shall undergo a complete physical and psychosocial evaluation before entering the ((~~approved~~)) monitoring program. This evaluation will be performed by a health care professional with expertise in ((~~chemical dependency~~)) impairing health conditions;

(b) Shall enter into a contract with the ((~~approved substance abuse~~)) monitoring program to comply with the requirements of the program which ((~~shall~~)) may include, but not be limited to: The podiatric ((~~practitioner~~)) physician:

(i) ((~~Shall undergo intensive substance abuse~~)) Treatment for an impairing health condition by an approved treatment facility;

(ii) ((~~Shall agree~~)) Agreeing to abstain from the use of all mind-altering substances, including alcohol, except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101. Said prescriber shall notify the monitoring program of all drugs prescribed within ((~~fourteen~~)) 14 days of the date care was provided;

(iii) ((~~Must complete the~~)) Completion of any prescribed aftercare((~~/~~)) and continuing care program of the ((~~intensive~~)) treatment facility. This may include either individual ((~~and/~~)) or group therapy, or both;

(iv) ((~~Must cause~~)) Directing the treatment counselor(s) and authorized prescriber(s) to provide reports to the approved monitoring program at specified intervals. Reports shall include treatment prognosis, goals, drugs prescribed, etc;

(v) ((~~Shall submit~~)) Submitting to random drug screening, with observed specimen collection, as specified by the approved monitoring program;

(vi) ((~~Shall attend~~)) Attending podiatric ((~~practitioner~~)) physician support groups facilitated by either a health care professional ((~~and/~~)) or twelve-step group meetings, or both as specified by the contract;

(vii) ((~~Shall comply~~)) Complying with specified employment conditions and restrictions as defined by the contract;

(viii) ((~~Shall sign~~)) Signing a waiver allowing the approved monitoring program to release information to the board if the podiatric ((~~practitioner~~)) physician does not comply with the requirements of the contract. ((~~The~~)) A podiatric ((~~practitioner~~)) physician may be subject to disciplinary action under RCW 18.130.160 and 18.130.180 for noncompliance with the contract or if ((~~he/she does~~)) the program is not successfully ((~~complete the program~~)) completed;

(c) Is responsible for paying the costs of the physical and psychosocial evaluation, ((~~substance abuse/dependency~~)) treatment of the impairing health condition, random urine screens, and other personal expenses incurred in compliance with the contract.

WSR 23-17-040
EXPEDITED RULES
DEPARTMENT OF REVENUE
[Filed August 9, 2023, 11:32 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-195 Taxes, deductibility, 458-20-22801 Tax reporting frequency, 458-20-254 Recordkeeping, 458-20-261 Commute trip reduction incentives, and 458-20-272 Tire fee—Studded tire fee—Core deposits or credits.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue (department) is amending these rules to incorporate 2020 legislation, SHB 2246. The purpose of this legislation was to reorganize laws related to environmental health without making any substantive policy changes, specifically, adding a new title to RCW to be codified as Title 70A RCW.

Reasons Supporting Proposal: Updating these rules to provide the correct statutory citations will provide accurate information to readers.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060.

Statute Being Implemented: RCW 70A.330.070; chapters 70A.15, 70A.200, 70A.205 RCW; RCW 82.08.0287, 82.08.036, 82.12.0282, 82.12.038.

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: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, Washington, 360-534-1589; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, Washington, 360-534-1605.

This notice meets the following criteria to use the expedited adoption process for these rules:

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.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is appropriate for these rule updates because the department is incorporating changes resulting from 2020 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 Leslie Mullin, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone 360-534-1589, fax 360-534-1606, email LeslieMu@dor.wa.gov, AND RECEIVED BY October 23, 2023.

August 8, 2023
Atif Aziz

Rules Coordinator

OTS-4532.1

AMENDATORY SECTION (Amending WSR 22-24-098, filed 12/6/22, effective 1/6/23)

WAC 458-20-195 Taxes, deductibility. (1) **Introduction.** This rule explains the circumstances under which taxes may be deducted from the gross amount reported as the measure of tax under the business and occupation tax, retail sales tax, and public utility tax. It also lists deductible and nondeductible taxes.

(2) **Deductibility of taxes.** In computing tax liability, the amount of certain taxes may be excluded or deducted from the gross amount reported as the measure of tax under the business and occupation (B&O) tax, the retail sales tax, and the public utility tax. These taxes may be deducted provided they have been included in the gross amount reported under the classification with respect to which the deduction is sought, and have not been otherwise deducted through inclusion in the amount of another allowable deduction, such as credit losses.

The amount of taxes which are not allowable as deductions or exclusions must in every case be included in the gross amount reported. License and regulatory fees are not deductible. Questions regarding the deductibility or exclusion of a tax that is not specifically identified in this rule should be submitted to the department of revenue for determination.

(3) **Motor vehicle fuel taxes.** RCW 82.04.4285 provides a B&O tax deduction for certain state and federal motor vehicle fuel taxes when the taxes are included in the sales price. These taxes include:

Fuel tax.	chapter 82.38 RCW;
Federal tax on diesel and special motor fuels (including leaking underground storage tank taxes), except train and aviation fuels.	26 U.S.C.A. Sec. 4041;
Federal tax on inland waterway commercial fuel. . .	26 U.S.C.A. Sec. 4042;
Federal tax on gasoline and diesel fuel for use in highway vehicles and motorboats.	26 U.S.C.A. Sec. 4081.

(4) **Taxes collected as an agent of municipalities, the state, or the federal government.** The amount of taxes collected by a taxpayer, as agent for municipalities, the state of Washington or its political subdivisions, or the federal government, may be deducted from the gross amount reported. These taxes are deductible under each tax classification of the Revenue Act under which the gross amount from such sales or services must be reported.

This deduction applies only where the amount of such taxes is received by the taxpayer as collecting agent and is paid by the agent directly to a municipality, the state, its political subdivisions, or to the federal government. When the taxpayer is the person upon whom a

tax is primarily imposed, no deduction or exclusion is allowed, since in such case the tax is a part of the cost of doing business. The mere fact that the amount of tax is added by the taxpayer as a separate item to the price of goods sold, or to the charge for services rendered, does not in itself, make such taxpayer a collecting agent for the purpose of this deduction. Examples of deductible taxes include:

FEDERAL—	
Tax on communications services (telephone and teletype-writer exchange services).	26 U.S.C.A. Sec. 4251;
Tax on transportation of persons.	26 U.S.C.A. Sec. 4261;
Tax on transportation of property.	26 U.S.C.A. Sec. 4271;
STATE—	
988 crisis hotline tax collected from subscribers.	chapter 82.86 RCW;
Aviation fuel tax collected from buyers by a distributor as defined by RCW 82.42.010	chapter 82.42 RCW;
Leasehold excise tax collected from lessees.	chapter 82.29A RCW;
Oil spill response tax collected from taxpayers by marine terminal operators. . .	chapter 82.23B RCW;
Retail sales tax collected from buyers.	chapter 82.08 RCW;
Solid waste collection tax collected from buyers.	chapter 82.18 RCW;
State 911 tax collected from subscribers.	chapter 82.14B RCW;
Use tax collected from buyers.	chapter 82.12 RCW;
MUNICIPAL—	
City admission tax.	RCW 35.21.280;
County admissions and recreations tax.	chapter 36.38 RCW;
County 911 tax collected from subscribers.	chapter 82.14B RCW;
Local retail sales and use taxes collected from buyers.	chapter 82.14 RCW.

(5) **Specific taxes which are not deductible.** Examples of specific taxes which may be neither deducted nor excluded from the measure of the tax include the following:

FEDERAL—	
Agricultural Adjustment Act (A.A.A.) compensating tax.	7 U.S.C.A. Sec. 615(e);
A.A.A. processing tax.	7 U.S.C.A. Sec. 609;
Aviation fuel.	26 U.S.C.A. Sec. 4091;

Distilled spirits, wine, and beer taxes.	26 U.S.C.A. chapter 51;
Diesel and special motor fuel tax for fuel used for purposes other than motor vehicles and motorboats.	26 U.S.C.A. Sec. 4041;
Employment taxes. . . .	26 U.S.C.A. chapters 21-25;
Estate taxes.	26 U.S.C.A. chapter 11;
Firearms, shells, and cartridges.	26 U.S.C.A. Sec. 4181;
Gift taxes.	26 U.S.C.A. chapter 12;
Importers, manufacturers, and dealers in firearms. . . .	26 U.S.C.A. Sec. 5801;
Income taxes.	26 U.S.C.A. Subtitle A;
Insurance policies issued by foreign insurers.	26 U.S.C.A. Sec. 4371;
Sale and transfer of firearms tax.	26 U.S.C.A. Sec. 5811;
Sporting goods.	26 U.S.C.A. Sec. 4161;
Superfund tax.	26 U.S.C.A. Sec. 4611;
Tires.	26 U.S.C.A. Sec. 4071;
Tobacco excise taxes. .	26 U.S.C.A. chapter 52;
Wagering taxes.	26 U.S.C.A. chapter 35;
STATE —	
Ad valorem property taxes.	Title 84 RCW;
Alcoholic beverages licenses and stamp taxes (Breweries, distillers, distributors, and wineries).	chapter 66.24 RCW;
Aviation fuel tax when not collected as agent for the state.	chapter 82.42 RCW;
Boxing, sparring and wrestling tax.	chapter 67.08 RCW;
Business and occupation tax.	chapter 82.04 RCW;
Cigarette tax.	chapter 82.24 RCW;
Estate tax.	Title 83 RCW;
Insurance premiums tax	chapter 48.14 RCW;
Hazardous substance tax.	chapter 82.21 RCW;
Litter tax.	chapter 82.19 RCW;
Pollution liability insurance fee.	RCW ((~~70A.149.080~~)) 70A.330.070;
Parimutuel tax.	RCW 67.16.100;
Petroleum products - underground storage tank tax.	chapter 82.23A RCW;
Public utility tax.	chapter 82.16 RCW;
Real estate excise tax. .	chapter 82.45 RCW;

Tobacco products tax. .	chapter 82.26 RCW;
Use tax when not collected as agent for state.	chapter 82.12 RCW;
MUNICIPAL—	
Local use tax when not collected as agent for cities or counties.	chapter 82.14 RCW;
Municipal utility taxes.	chapter 54.28 RCW;
Municipal and county real estate excise taxes.	chapter 82.46 RCW.

AMENDATORY SECTION (Amending WSR 20-22-093, filed 11/3/20, effective 12/4/20)

WAC 458-20-22801 Tax reporting frequency. (1) **Introduction.**

(a) Every person liable for an excise tax imposed by the laws of the state of Washington for which the department of revenue has primary or secondary administrative responsibility, i.e., Title 82 RCW and chapters 67.28 (Hotel/motel tax), ((~~70A.93~~)) 70A.200 (Litter tax), ((~~70A.95~~)) 70A.205 (Tax on tires), and 84.33 RCW (Forest excise tax), must file an electronic tax return with the department of revenue accompanied by an electronic payment of the tax due; however, the taxes under chapter 82.24 RCW (Tax on cigarettes) must be collected through sales of revenue stamps.

(b) Other rules to reference. The department has adopted other rules that readers may want to refer to:

(i) WAC 458-20-228 Returns, payments, penalties, extensions, interest, stays of collection.

(ii) WAC 458-20-22802 Electronic filing and payment.

(2) **Reporting frequency.** Taxpayers are required to electronically file and pay their excise taxes on a monthly basis. However, the department may relieve any taxpayer or class of taxpayers from this monthly obligation and may require the return to cover other longer reporting periods, but not in excess of one year. RCW 82.32.045.

(a) General rule. Unless otherwise provided by the department, a taxpayer must report and pay taxes due according to the following schedule:

IF ANNUAL ESTIMATED TAX LIABILITY IS:	REPORTING FREQUENCY
Over $4800.00 per year	Monthly returns:
Between $1050.00 & $4800.00 per year	Quarterly returns:
Less than $1050.00 per year	Annual returns:

When requested by a taxpayer or group of taxpayers, the department may approve more frequent or less frequent reporting if, in the opinion of the department, the change assists the department in the efficient and effective administration of the tax laws of this state.

(b) Changes in reporting frequency. Changes in reporting frequency are effective only after the department has consented to or required the change, and notice of the change has been given by the department to the taxpayer or group of taxpayers.

Situations when changes in reporting frequency may be approved or required include, but are not limited to, the following:

(i) An increase or decrease in the estimated annual tax liability of a taxpayer results in a different threshold as provided in (a) of this subsection;

(ii) A taxpayer or group of taxpayers has substantial periods of no taxable business activity during the calendar year, i.e., temporary businesses;

(iii) The department finds a taxpayer or a group of taxpayers has repeatedly failed to comply with tax reporting and/or payment obligations; or

(iv) The type of tax reported is required to be filed on a specific reporting frequency.

(c) Notice of change in reporting frequency. No change in reporting frequency will be effective except with at least ((~~thirty~~)) 30 days advance written or electronic notice from the department to the taxpayer at the taxpayer's last provided email address or reported business address.

(d) Filing returns. Returns must be submitted electronically. Taxpayers approved by the department may continue to submit paper returns that are either provided by the department, or approved and accepted by the department. Paper forms (including multipurpose returns for past and present reporting periods) are available for download from the department's website at dor.wa.gov.

Taxes not reported on the combined excise tax return, i.e. forest excise tax, etc. must be reported at such times and upon such forms as are otherwise provided by the department.

AMENDATORY SECTION (Amending WSR 20-22-093, filed 11/3/20, effective 12/4/20)

WAC 458-20-254 Recordkeeping. (1) **Introduction.** This rule defines the requirements for the maintenance and retention of books, records, and other sources of information. It also addresses these requirements where all or a part of the taxpayer's books and records are received, created, maintained, or generated through various computer, electronic, and/or imaging processes and systems.

The general requirements imposed on taxpayers under RCW 82.32.070 are to retain and make available those records necessary to verify that the correct tax liability has been reported and paid by the taxpayer with respect to the taxes administered by the department of revenue (department). The records provided to the department are confidential and privileged and may not be disclosed by the department, except as provided by RCW 82.32.330.

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

(a) **"Database management system"** means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(b) **"Electronic data interchange"** or **"EDI technology"** means the computer-to-computer exchange of business transactions in a standardized structured electronic format.

(c) **"Hard copy"** means any documents, records, reports or other data printed on paper.

(d) **"Machine-sensible record"** means a collection of related information in any electronic format (e.g., database management systems, EDI technology, automated data process systems, etc.). Machine-sensi-

ble records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

(e) **"Records"** means all books, data, documents, reports, or other information, including those received, created, maintained, or generated through various computer, electronic, and/or imaging processes and systems.

(f) **"Storage-only imaging system"** means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

(3) **Recordkeeping requirements—General.**

(a) **Duty of taxpayer to keep records.** Every taxpayer liable for a tax or fee imposed by the laws of the state of Washington for which the department has primary or secondary administrative responsibility, e.g., Title 82 RCW, chapters 67.28 ((~~RCW~~)) (hotel/motel tax), ((~~chapter 70A.95 RCW~~)) 70A.205 (fee on tires), and ((~~chapter~~)) 84.33 RCW (forest excise tax), must keep complete and adequate records from which the department can determine the tax liability of the taxpayer.

It is the duty of each taxpayer to prepare and preserve all records in a systematic manner conforming to accepted accounting methods and procedures. Records are to be kept and preserved and must be presented upon request by the department or its authorized representatives. The records should demonstrate:

(i) The amounts of gross receipts and sales from all sources, however derived, including barter or exchange transactions, whether or not such receipts or sales are taxable. These amounts must be supported by original source documents or records including but not limited to all purchase invoices, sales invoices, contracts, and such other records as may be necessary to substantiate gross receipts and sales.

(ii) The amounts of all deductions, exemptions, or credits claimed through supporting records or documentation required by statute or administrative rule, or other supporting records or documentation necessary to substantiate the deduction, exemption, or credit.

(iii) The payment of retail sales tax or use tax on capital assets, supplies, articles manufactured for your own use, and other items used by the taxpayer as a consumer.

(iv) The amounts of any refunds claimed. These amounts must be supported by records as may be necessary to substantiate the refunds claimed. Refer to WAC 458-20-229 Refunds, for information on the refund process.

(b) **Types of records.** The records kept, preserved, and presented must include the normal records maintained by an ordinary prudent business person. These records may include general ledgers, sales journals, cash receipts journals, bank statements, check registers, and purchase journals, together with all bills, invoices, cash register tapes, and other records or documents of original entry supporting the books of account entries. The records must include all federal and state tax returns and reports and all schedules, work papers, instructions, and other data used in the preparation of the tax reports or returns.

(c) **Format of records.** If a taxpayer retains records in both machine-sensible and hard-copy formats, they must make the records available to the department in machine-sensible format upon request of

the department. However, the taxpayer is not prohibited from demonstrating tax compliance with traditional hard-copy documents or reproductions, although this does not eliminate the requirement that they provide access to machine-sensible records, if requested.

Machine-sensible records used to establish tax compliance must contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the department upon request.

At the time of an examination, the retained records must be capable of being retrieved and converted to a readable record format, as required in subsection (6) of this rule.

Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(4) **Record retention period.** All records must be open for inspection and examination at any time by the department, upon reasonable notice, and must be kept and preserved for a period of five years. RCW 82.32.070.

(5) **Failure to maintain or disclose records.** Any taxpayer who fails to comply with the requirements of RCW 82.32.070 or this rule is forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department based upon any period for which such books, records, and invoices have not been so kept, preserved, or disclosed. RCW 82.32.070.

(6) **Electronic records.**

(a) **Electronic data interchange requirements.**

(i) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the department to interpret the coded information.

(ii) The taxpayer may capture the information at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists and make them available to the department. In this example, the taxpayer need not retain its EDI transaction for tax purposes if the vendor master file contains the required information.

(b) **Electronic data processing systems requirements.** The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately

designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

(c) **Internal controls.**

(i) Upon the request of the department, the taxpayer must provide a description of the business process that created the retained records. Such description must include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(ii) The taxpayer must be capable of demonstrating:

(A) The functions being performed as they relate to the flow of data through the system;

(B) The internal controls used to ensure accurate and reliable processing; and

(C) The internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(iii) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

(A) Record formats or layouts;

(B) Field definitions (including the meaning of all codes used to represent information);

(C) File descriptions (e.g., data set name); and

(D) Detailed charts of accounts and account descriptions.

(7) **Access to machine-sensible records.**

(a) The manner in which the department is provided access to machine-sensible records may be satisfied through a variety of means that take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(b) Access will be provided in one or more of the following manners:

(i) The taxpayer may arrange to provide the department with the hardware, software and personnel resources to access the machine-sensible records.

(ii) The taxpayer may arrange for a third party to provide the hardware, software and personnel resources necessary to access the machine-sensible records.

(iii) The taxpayer may convert the machine-sensible records to a standard record format specified by the department, including copies of files, on a magnetic medium that is agreed to by the department.

(iv) The taxpayer and the department may agree on other means of providing access to the machine-sensible records.

(8) **Storage-only imaging systems.**

(a) **Converting documents.** For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this rule are met. Documents which may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, credit memoranda, etc.

(b) **System requirements.** Microfilm, microfiche and other storage-only imaging systems must meet the following requirements:

(i) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche or other storage-only imaging system must be maintained and made available upon request. Such documentation must, at a minimum, contain a sufficient descrip-

tion to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(ii) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for a period of five years.

(iii) Upon request by the department, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche or other storage-only imaging system.

(iv) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(v) All data stored on microfilm, microfiche or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

(vi) There must be no substantial evidence that the microfilm, microfiche, or other storage-only imaging system lacks authenticity or integrity.

(9) **Hard-copy records.**

(a) **Recordkeeping requirements.** The provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations, except as otherwise provided in this rule. Hard-copy records may be retained on a recordkeeping medium as provided in subsection (8) of this rule. The department may request hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

Hard-copy records not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), do not need to be created. Computer printouts that are created for validation, control, or other temporary purposes do not need to be retained.

(b) **Debit and credit card transactions.** Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule.

(10) **Out-of-state businesses.** An out-of-state business which does not keep its necessary records within this state may either produce these records within this state as required for examination by the department or permit the examination of all of its records by the department or its authorized representatives at the place where the records are kept. RCW 82.32.070.

AMENDATORY SECTION (Amending WSR 22-06-050, filed 2/24/22, effective 3/27/22)

WAC 458-20-261 Commute trip reduction incentives. (1) **Introduction.** This rule explains the various commute trip reduction incentives. RCW 82.04.355 and 82.16.047 exempt amounts received from pro-

viding ride sharing, or ride sharing for persons with special transportation needs, from business and occupation (B&O) tax and public utility tax (PUT). RCW 82.08.0287 and 82.12.0282 provide sales and use tax exemptions for sales or use of passenger motor vehicles as ride sharing vehicles. Finally, chapter 82.70 RCW provides commute trip reduction incentives in the form of B&O tax or PUT credits in connection with ride sharing, public transportation, car sharing, and nonmotorized commuting.

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

(a) **"Car sharing"** means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis. RCW 82.70.010.

(b) **"Nonmotorized commuting"** means commuting to and from the workplace by an employee, by walking or running, or by riding a bicycle or other device not powered by a motor. "Nonmotorized commuting" does not include teleworking, which is a program where work functions normally performed at a traditional workplace are instead performed by an employee at his or her home, at least one day a week for the purpose of reducing the number of trips to the employee's workplace. RCW 82.70.010.

(c) **"Public transportation"** means the transportation of packages, passengers, and their incidental baggage, by means other than by charter bus or sight-seeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems. "Public transportation" includes passenger services of the Washington state ferries and passenger-only ferry services for those public transportation benefit areas eligible to provide passenger-only ferry service under RCW 36.57A.200. RCW 82.70.010.

(d)(i) **"Ride sharing"** means a carpool or vanpool arrangement whereby one or more groups not exceeding 15 persons each, including the drivers, and not fewer than three persons, including the drivers, are transported in a passenger motor vehicle with a gross vehicle weight not exceeding 10,000 pounds. RCW 46.74.010(2). See subsection (4)(b) of this rule for increased minimum group size requirements in some circumstances. "Ride sharing" includes ride sharing on Washington state ferries. RCW 82.70.010(6).

(ii) Ride sharing does not include transportation provided in the normal course of business by entities subject to chapters 46.72A (limousines), 48.177 (commercial transportation services), 81.66 (private, nonprofit transportation providers that receive compensation for transporting persons with special transportation needs), 81.68 (auto transportation companies), 81.70 (passenger charter and excursion carriers), and 81.72 (taxicabs) RCW, or offer peer-to-peer car sharing. "Peer-to-peer car sharing" means motor vehicle owners making their motor vehicles available for persons to rent for short periods of time.

(e) **"Ride sharing for persons with special transportation needs"** means an arrangement, whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider, in a passenger motor vehicle as defined by the department of licensing to include small buses, cutaways, and modified vans not more than 28 feet long. The driver need not be a person with special transportation needs. RCW 46.74.010.

(i) **"Private, nonprofit transportation provider"** means any private, nonprofit corporation providing transportation services for compensation solely to persons with special transportation needs. RCW 81.66.010.

(ii) **"Persons with special transportation needs"** means those persons, including their personal attendants, who because of physical or mental disability, income status, or age, are unable to transport themselves or to purchase appropriate transportation. RCW 81.66.010.

(3) **B&O tax and PUT exemptions for providing ride sharing or ride sharing for persons with special transportation needs.** RCW 82.04.355 and 82.16.047 provide B&O tax and PUT exemptions for amounts received in the course of ride sharing or ride sharing for persons with special transportation needs.

(4) **Retail sales tax and use tax exemptions on sales or use of passenger motor vehicles as ride sharing vehicles.** RCW 82.08.0287 and 82.12.0282 provide retail sales tax and use tax exemptions for sales and use of passenger motor vehicles as ride-sharing vehicles. The following conditions apply to qualify for these exemptions:

(a) **Minimum duration of usage.** The passenger motor vehicles must be used primarily for ride sharing or ride sharing for persons with special transportation needs for 36 consecutive months beginning from the date of purchase (retail sales tax exemption) and the date of first use (use tax exemption). If the vehicle is used as a ride sharing vehicle for less than 36 consecutive months, the registered owner must pay the retail sales tax or use tax.

(b) **Increased passenger requirements for vehicles not operated by a public transportation agency.** If a vehicle is not operated by a public transportation agency, the minimum group size is increased from three persons each to five persons each including the driver. RCW 82.08.0287 (2)(b) and 82.12.0282 (2)(b).

(c) **Qualifying jurisdictions.** Vehicles must be operated within:

(i) A county, or a city or town within that county, which has a commute trip reduction plan under chapter ((~~70A.94~~)) 70A.15 RCW; or

(ii) In other counties, where the vehicle is registered with, or operated by, a public transportation agency.

(d) **Ownership and operation.** The vehicle must be:

(i) Operated by a public transportation agency for the benefit of the general public;

(ii) Used by a major employer, as defined in RCW 70A.15.4010, as an element of its commute trip reduction program for their employees; or

(iii) Owned and operated by individual employees and registered either with the employer as part of its commute trip reduction program or with a public transportation agency.

(e) **Certification.**

(i) Individual employee owned and operated motor vehicles require certification that the vehicle is registered with a major employer or a public transportation agency; and

(ii) Major employers who own and operate motor vehicles for their employees must certify that the commute ride sharing arrangement conforms to a carpool or vanpool element contained within their commute trip reduction program.

(5) **B&O tax or PUT credit for ride sharing, public transportation, car sharing, or nonmotorized commuting.** RCW 82.70.020 provides a credit against B&O tax or PUT liability for amounts paid to or on behalf of employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting. The credit

is equal to the amount paid to or on behalf of each employee multiplied by 50 percent, but may not exceed $60 per employee per fiscal year. No refunds will be granted for unused credits.

(a) **Who is eligible for this credit?**

(i) Employers in Washington are eligible for this credit, for amounts paid to or on behalf of their own or other employees, as financial incentives to such employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(ii) Property managers who manage worksites in Washington are eligible for this credit, for amounts paid to or on behalf of persons employed at those worksites, as financial incentives to such persons for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(b) **What is the credit amount?** The amount of the credit is equal to the amount paid to or on behalf of each employee multiplied by 50 percent, but may not exceed $60 per employee per fiscal year. RCW 82.70.020.

(c) **What is a "fiscal year"?** A "fiscal year" begins on July 1st of one year and ends on June 30th of the following year.

(d) **When will the credit expire?** The credit program is scheduled to expire July 1, 2024. No credit may be claimed after June 30, 2024.

(e) **What are the limitations of the credit?**

(i) The credit may not exceed the amount of B&O tax or PUT that would otherwise be due for the same fiscal year.

(ii) A person may not receive credit for amounts paid to or on behalf of the same employee under both B&O tax and PUT.

(iii) A person may not take a credit for amounts claimed for credit by other persons.

(iv) The total credit granted to a person under both B&O tax and PUT may not exceed $100,000 for a fiscal year.

(v) The total credit granted to all persons under both B&O tax and PUT may not exceed $2,750,000 in any fiscal year.

(vi) No credit or portion of a credit denied, because of exceeding the limitations in (i), (iv), or (v) of this subsection, may be used against tax liability for other fiscal years.

(vii) No person is eligible for tax credits under RCW 82.70.020 if the additional revenues for the multimodal transportation account (RCW 47.66.070) created by chapter 361, Laws of 2003 are terminated.

(f) **What are the credit procedures?**

(i) Persons applying for the credit must complete the commute trip reduction credit annual application. The application must be electronically filed and received by the department between January 1st and January 31st, following the calendar year in which the applicant made incentive payments. The commute trip reduction credit annual application is available through the business's "My DOR" account on the department's website at dor.wa.gov.

(ii) The department must approve or deny a completed application within 60 days of the January 31st deadline. The department must deny an application not received by the January 31st deadline, except the department may accept applications received up to 15 calendar days after the deadline if the application was not received because of circumstances beyond the control of the taxpayer. For what is considered circumstances beyond the control of a taxpayer, see WAC 458-20-228 Returns, payments, penalties, extensions, interest, stays of collection. Once the application is approved and the tax credit is granted, the department is not allowed to increase the credit.

(iii) If the total amount of credit applied for by all approved applicants in a fiscal year exceeds the limitation as provided in (i)(v) of this subsection, the amount of credit allowed for all applicants must be proportionally reduced so as not to exceed the limit. The amount reduced may not be carried forward and claimed in subsequent fiscal years.

(iv) To claim a commute trip reduction tax credit, a person must file all returns, forms, and other information the department requires in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format is not filed until received by the department in an electronic format. "Returns" has the same meaning as "return" in RCW 82.32.050.

(g) **Examples.** The following examples identify facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(i) **Example 1.** An employer pays $180 for a yearly bus pass for one employee. For another employee, the employer buys a bicycle helmet and bicycle lock for a total of $50. The sum of these two amounts, $230, is the total expenditure during a fiscal year of amounts paid to, or on behalf of, employees in support of ride sharing, using public transportation, using car sharing, and using nonmotorized commuting. The employer may claim a credit of $60 for the amount spent for the employee using the bus pass. 50 percent of $180 is $90, but the credit is limited to $60 per employee. The employer may claim a credit of $25 (50 percent of $50) for the amount spent for the employee who bicycles to work. Even though 50 percent of $230 (the total amount spent on both employees), works out to be less than $60 per employee, the credit is computed by looking at actual spending for each employee and not by averaging the spending for both employees.

(ii) **Example 2.** An employer provides parking spaces for the exclusive use of ride sharing vehicles. Amounts spent for signs, painting, or other costs related to the parking spaces do not qualify for the credit. This is because the credit is for financial incentives paid to or on behalf of employees. While the parking spaces support the use of ride sharing vehicles, they are not financial incentives and do not involve amounts paid to or on behalf of employees.

(iii) **Example 3.** An employer pays the property manager for a yearly bus pass for one employee who works at the worksite managed by the property manager. The property manager in turn pays the amount received from the employer to a public transportation agency to purchase the bus pass. Either the employer or the property manager, but not both, may take the credit for this expenditure.

AMENDATORY SECTION (Amending WSR 20-22-093, filed 11/3/20, effective 12/4/20)

WAC 458-20-272 Tire fee—Studded tire fee—Core deposits or credits. (1) **Introduction.** This rule describes the tire fee imposed under RCW ((~~70A.95.510~~)) 70A.205.405 and the studded tire fee imposed under RCW 46.37.427. This rule also describes how business and occupation (B&O), sales, and use taxes apply to tire fees, battery core charges and core deposits or credits, including the exemptions described in RCW 82.08.036 and 82.12.038.

(a) **Other rules that may be relevant.** Readers may want to refer to other rules for additional information, including those in the following list:

(i) WAC 458-20-228 Returns, payments, penalties, extensions, interest, stays of collection.

(ii) WAC 458-20-278 Returned goods, defective goods—Motor vehicle lemon law.

(b) **Examples.** This rule contains examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(2) **Tire fee.**

(a) **What is the tire fee?** The tire fee as described in RCW ((~~70A.95.510~~)) 70A.205.405 is a one-dollar fee collected by the seller from the buyer on every retail sale of each new replacement vehicle tire. If new tires are leased, the fee must be collected once at the beginning of the lease.

(b) **How do I report the tire fee?** A seller must report on the excise tax return the number of new replacement vehicle tires sold. Tire sellers may retain ((~~ten~~)) 10 percent of the fee and must remit the remainder to the department of revenue (department). As a result, the amount that must be reported and paid to the department is the number of new replacement vehicle tires sold during the tax reporting period multiplied by ((~~ninety~~)) 90 cents.

(c) **What if the seller fails to collect the fee or does not pay the fee on time?** The seller is personally liable for payment of the fee, whether or not the fee is collected from the buyer. Any seller who appropriates or converts the fee collected to their own use or to any use other than the payment of the fee by the due date, minus the ((~~ten~~)) 10 percent retained, is guilty of a gross misdemeanor. Interest and penalties apply to late payments.

(d) **What happens if a buyer fails to pay the fee?** The tire fee, until paid by the buyer to the seller or the department, is considered a debt from the buyer to the seller. Any buyer who refuses to pay the fee is guilty of a misdemeanor.

(e) **Is sales tax imposed on the tire fee?** No. The measure of the sales tax does not include the tire fee. See RCW 82.08.036.

(f) **Is the ((~~ten~~)) 10 percent amount retained by the seller subject to B&O tax?** Yes. The seller must report the retained amount as gross income under the service and other activities tax classification on the excise tax return.

(g) **What tires are subject to the tire fee?** All new replacement vehicle tires are subject to the tire fee. Refer to RCW ((~~70A.95.030~~)) 70A.205.015 for the definition of "vehicle."

(i) Examples of vehicles for which new replacement tires are subject to the fee include:

(A) Automobiles;

(B) Trucks;

(C) Recreational vehicles;

(D) Trailers;

(E) All-terrain vehicles (ATVs);

(F) Agricultural vehicles, such as tractors or combines;

(G) Industrial vehicles, such as forklifts;

(H) Construction vehicles, such as loaders or graders; and

(I) Golf carts.

(ii) Bicycles, wheelbarrows, and hand trucks are examples of devices to which the new replacement tire fee does not apply.

(iii) The tire fee does not apply to the sale of retreaded vehicle tires. Nor does it apply to tires provided free of charge under the terms of a recall or warranty.

(h) **May I refund the fee if a tire is returned?** If a customer returns the purchased new tire and the entire selling price is refunded to the customer, the one-dollar tire fee is likewise refundable. The refunded amount may be claimed on the excise tax return in the same manner as refunded sales tax. If the seller does not refund the full sales price to the customer, the one-dollar fee is not refundable.

(i) **Does the tire fee apply on sales to the federal government or Indians and Indian tribes?** The tire fee is not imposed on sales to the federal government and need not be collected by the seller. The tire fee does not apply to sales of tires delivered to enrolled members or tribes in "Indian country." For information on sales to the federal government, see WAC 458-20-190 Sales to and by the United States and certain entities created by the United States—Doing business on federal reservations—Sales to foreign governments, and for sales to Indians and Indian tribes, see WAC 458-20-192 Indians—Indian country.

(j) **If the sale is exempt from sales tax, is the tire fee due?** Statutory exemptions from sales tax do not apply to the tire fee. The tire fee is due on every retail sale of a new replacement tire whether or not sales tax is due.

(3) **Studded tire fee.**

(a) **What is the studded tire fee?** The studded tire fee as described in RCW 46.37.427 is a five dollar fee imposed on the retail sale of each new tire sold that contains studs. The seller will collect the fee from the buyer. For the purpose of this subsection, "new tire sold that contains studs" means a tire that is manufactured for vehicle purposes and contains metal studs, and does not include bicycle tires or retreaded vehicle tires.

(b) **Who remits the studded tire fee to the department?** The seller collects the five dollar fee from the buyer and holds it in trust until paid to the department; however, the seller may retain ((~~ten~~)) 10 percent of the fee collected.

(c) **What if the seller fails to collect the fee or does not pay the fee on time?** Interest and penalties, as described in subsection (2)(c) of this rule also apply to the studded tire fee.

(d) **What happens if a buyer fails to pay the fee?** As with the tire fee, a buyer who refuses to pay the fee is guilty of a misdemeanor. See subsection (2)(d) of this rule.

(e) **Is sales tax imposed on the tire fee?** No. The seller is collecting the fee as an agent for the state and thus the measure of sales tax does not include the studded tire fee. For additional information on taxpayers acting as collecting agents, see WAC 458-20-195 Taxes, deductibility.

(f) **Is the ((~~ten~~)) 10 percent amount retained by the seller subject to B&O tax?** Yes. As with the tire fee, the seller must report the retained amount as gross income under the service and other activities tax classification on the excise tax return.

(g) **Is the studded tire fee refundable if the tire is returned?** If a new studded tire is returned, the studded tire fee is handled the same as the tire fee as described in subsection (2)(h) of this rule.

(h) **Does the studded tire fee apply to tires sold to the federal government or Indians and Indian tribes?** With respect to these sales,

the studded tire fee is handled the same as the tire fee described in subsection (2)(i) of this rule.

(i) **If the sale is exempt from sales tax, is the studded tire fee due?** As with the tire fee described in subsection (2)(j) of this rule, statutory exemptions from sales tax do not apply to the studded tire fee.

(4) **Core deposits or credits - Battery core charges.**

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

(i) **Core deposits or credits.** "Core deposits or credits" means the amount representing the value of returnable products such as batteries, starters, brakes, and other products with returnable value added for purposes of recycling or remanufacturing.

(ii) **Battery core charge.** "Battery core charge" refers to a core deposit, not less than five dollars, that a seller by law must retain when a retail purchaser has no used battery to exchange or trade in. A buyer may return within ((~~thirty~~)) 30 days of the purchase with a used battery of equivalent size and claim the core charge amount. See RCW ((~~70A.95.630 and 70A.95.640~~)) 70A.205.515 and 70A.205.520.

(b) **How is tax calculated when the buyer receives a core deposit or credit?** Retail sales and use taxes do not apply to consideration received in the form of core deposits or credits when a purchaser exchanges or trades in a core for recycling or remanufacturing. Therefore, the measure of the sales or use tax may be reduced by the amount of the core deposit or credit. See RCW 82.08.036 and 82.12.038. The core deposit and credit exemptions apply only to the retail sales and use taxes. There is no equivalent exemption or deduction for B&O tax purposes. Therefore, the amount reported under the appropriate B&O tax classification must include the value of core deposits or credits.

(c) **Examples.**

(i) **Example 1.** A customer purchases at retail a new replacement battery and reconditioned starter, providing the seller with a battery core and a starter core in exchange. The selling price of the new battery, including the battery core charge, is $60.00. The customer is allowed a $5.00 credit because a battery core is exchanged, meaning the cost of the battery to the customer, excluding sales tax, is $55.00. The selling price of the starter is $50.00. The seller allows a $3.00 credit for the starter core, meaning the cost to the customer, excluding sales tax, is $47.00. Retailing B&O tax is due upon the total value of cash plus core value, in this case $110.00, or $60.00 plus $50.00. However, the $8.00 of core deposits or credits may be deducted from the measure of the retail sales tax under RCW 82.08.036. Thus, retail sales tax is due on $102.00, or $55.00 plus $47.00.

(ii) **Example 2.** The seller in Example 1 delivers the starter and battery cores accepted in the exchange to wholesalers. A starter wholesaler issues a refund and a battery wholesaler issues a credit memorandum to be applied against future wholesale battery purchases. The return of the used products by the auto parts store for recycling or remanufacturing and subsequent receipt of a refund or credit for the core deposit or credit is not considered taxable consideration for purposes of the B&O tax.

WSR 23-17-163
EXPEDITED RULES
UTILITIES AND TRANSPORTATION COMMISSION
[Filed August 23, 2023, 10:03 a.m.]

Title of Rule and Other Identifying Information: Expedited amendment of WAC 480-93-240 and 480-75-240.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making to permanently amend WAC 480-93-240, amended by emergency rule making under WSR 23-15-057, effective July 14, 2023, and WAC 480-75-240. The proposed amendment would allow the commission to continue to fund the pipeline safety program through accurate calculation of pipeline safety program fees without an offset in conflict with the relevant statutory authority. The commission filed a previous CR-105 proposing expedited amendment to WAC 480-93-240 only, published at WSR 23-25-059. This CR-105 amends and replaces WSR 23-25-059.

Reasons Supporting Proposal: Prior to emergency amendment, WAC 480-93-240 conflicted with statutes prescribing the method of calculation of pipeline safety fees, resulting in underfunding of the pipeline safety fee program. The rule required the commission to offset pipeline safety fees by the total amount of penalties collected under RCW 19.122.055, but RCW 19.122.170 directs the commission to spend those penalty funds on education, not to fund the pipeline safety program. WAC 480-75-240 still contains the conflicting provision. This rule making will allow the commission to amend both rules and correctly calculate pipeline safety program fees.

Statutory Authority for Adoption: RCW 80.01.040, 81.01.010, 81.04.160, and 80.24.020.

Statute Being Implemented: Chapter 19.122 RCW.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Gregory J. Kopta, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-664-1355; Implementation and Enforcement: Amanda Maxwell, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-664-1115.

This notice meets the following criteria to use the expedited adoption process for these rules:

Relates only to internal governmental operations that are not subject to violation by a person.

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The amended rule relates purely to the commission's internal calculations of regulatory fees and is prescribed by statute. While the calculation will affect companies' financial liabilities for fees, it is consistent with the statutory requirements and comports with commission practice. Further, the pipeline safety program provides for essential services that are necessary for the preservation of the public safety and therefore ensuring adequate funding is necessary.

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 Amanda Maxwell, Washington Utility and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250, phone 360-664-1160, email records@utc.wa.gov, AND RECEIVED BY October 23, 2023.

August 23, 2023
Amanda Maxwell
Executive Director and Secretary

OTS-4859.1

AMENDATORY SECTION (Amending WSR 08-12-045, filed 5/30/08, effective 6/30/08)

WAC 480-75-240 Annual pipeline safety fee methodology. (1) This rule sets forth the commission's regulatory fee methodology for hazardous liquid pipelines as that term is defined in RCW 81.88.010, and gas pipelines, as that term is defined in RCW 81.88.010. For purposes of this section, these pipelines are called "company" or "companies" and the "commission's pipeline safety program" means the pipeline safety program that includes each program.

(2) Each company will pay an annual pipeline safety fee as established in the methodology set forth in subsection (3) of this section.

(3) The fee will be set by general order of the commission entered before September 1 of each year and will be collected in four equal installments payable on the first day of each quarter as listed below:

1st quarter fee installment due September 1;
2nd quarter fee installment due December 1;
3rd quarter fee installment due March 1;
4th quarter fee installment due June 1.

(a) The total of pipeline safety fees will be calculated to recover no more than the costs of the legislatively authorized workload represented by current appropriations for the commission's pipeline safety program, less the amount received in total base grants through the Federal Department of Transportation ((~~and less any amount received from penalties collected under RCW 19.122.050~~)). Federal grants, other than the federal base grant, received by the commission for additional activities not included or anticipated in the legislatively directed workload will not be credited against pipeline company safety fees, nor will the work supported by grants be considered a cost for purposes of calculating fees. To the extent that the actual base grant proceeds are different than the amount credited, the difference will be applied in the following year.

(b) Total pipeline safety fees as determined in (a) of this subsection will be calculated in two parts:

(i) The commission's annual overhead charge to the pipeline safety program will be allocated among companies according to each compa-

ny's share of the total of all pipeline miles within Washington as reported by companies in their annual reports to the commission.

(ii) After deducting the commission's annual overhead charge, the remainder of the total pipeline safety fees will be allocated among companies in proportion to each company's share of the commission pipeline safety program staff hours that are directly attributable to particular companies. The commission will determine each company's share by dividing the total hours directly attributable to each company during the two preceding calendar years (as reflected in the program's timekeeping system) by the total of directly attributable hours for all companies over the same period.

(iii) For fee-setting purposes, any program hours related to a commission investigation of an incident found to be attributed to third-party damage that results in penalties collected under RCW 19.122.055 will not be directly attributed to the owner of the damaged pipeline.

(c) The commission general order setting fees pursuant to this rule will detail the specific calculation of each company's pipeline safety fee including the allocations set forth in (b) of this subsection.

(4) By August 1 of each year the commission will mail an invoice to each company.

(5) All funds received by the commission for the pipeline safety program will be deposited to the pipeline safety account. For each gas pipeline company subject to RCW 81.24.010, its portion of the company's total regulatory fee applicable to pipeline safety will be transferred from the public service revolving fund to the pipeline safety account.

(6) Any company wishing to contest the amount of the fee imposed under this section must pay the fee when due and, within six months after the due date of the fee, file a written petition with the commission requesting a refund. The petition shall state the name of the petitioner; the date and the amount paid, including a copy of any receipt, if available; the amount of the fee that is contested; all reasons why the commission should not impose the fee in that amount; and a calculation and explanation of the fee amount the petitioner contends is appropriate, if any. The commission may grant the petition administratively or may set the petition for adjudication.

OTS-4768.1

AMENDATORY SECTION (Amending WSR 08-12-046, filed 5/30/08, effective 6/30/08)

WAC 480-93-240 Annual pipeline safety fee methodology. (1) This rule sets forth the commission's fee methodology for the annual regulatory fee paid by a gas pipeline company as that term is defined in RCW 81.88.010. For the purposes of this section, a gas pipeline company is called "company" or "companies" and the "commission's pipeline safety program" means the pipeline safety program that includes each company.

(2) Each company will pay an annual pipeline safety fee as established in the methodology set forth in subsection (3) of this section.

(3) The fee will be set by general order of the commission entered before September 1 of each year and will be collected in four equal installments payable on the first day of each quarter as listed below:

1st quarter fee installment due September 1;
2nd quarter fee installment due December 1;
3rd quarter fee installment due March 1;
4th quarter fee installment due June 1.

(a) The total of pipeline safety fees will be calculated to recover no more than the costs of the legislatively authorized workload represented by current appropriations for the commission's pipeline safety program, less the amount received in total base grants through the Federal Department of Transportation ((~~and less any amount received from penalties collected under RCW 19.122.050~~)). Federal grants, other than the federal base grant, received by the commission for additional activities not included or anticipated in the legislatively directed workload will not be credited against company pipeline safety fees, nor will the work supported by grants be considered a cost for purposes of calculating such fees. To the extent that the actual base grant proceeds are different than the amount credited, the difference will be applied in the following year.

(b) Total pipeline safety fees as determined in (a) of this subsection will be calculated in two parts:

(i) The commission's annual overhead charge to the pipeline safety program will be allocated among companies according to each gas pipeline company's share of the total of all pipeline miles within Washington as reported by companies in their annual reports to the commission.

(ii) After deducting the commission's annual overhead charge, the remainder of the total pipeline safety fee commission's annual pipeline safety program allotment will be allocated among companies in proportion to each company's share of the program staff hours that are directly attributable to particular companies. The commission will determine each company's share by dividing the total hours directly attributable to the company during the two preceding calendar years (as reflected in the program's timekeeping system) by the total of directly attributable hours for all companies over the same period.

(iii) For fee setting purposes, any program hours related to a commission investigation of an incident attributed to third-party damage that results in penalties collected under RCW 19.122.055 will not be directly attributed to the owner of the damaged gas pipeline.

(c) The commission general order setting fees pursuant to this rule will detail the specific calculation of each company's pipeline safety fee including the allocations set forth in (b) of this subsection.

(4) By August 1 of each year the commission staff will mail an invoice to each company .

(5) All funds received by the commission for the pipeline safety program will be deposited to the pipeline safety account. For each gas pipeline company subject to RCW 80.24.010, their portion of the company's total regulatory fee applicable to pipeline safety will be transferred from the public service revolving fund to the pipeline safety account.

(6) Any company wishing to contest the amount of the fee imposed under this section must pay the fee when due and, within 6 months after the due date of the fee, file a petition in writing with the commission requesting a refund. The petition must state the name of the

petitioner; the date and the amount paid, including a copy of any receipt, if available; the amount of the fee that is contested; all reasons why the commission may not impose the fee in that amount; and a calculation and explanation of the fee amount the petitioner contends is appropriate, if any. The commission may grant the petition administratively or may set the petition for adjudication or for brief adjudication.