

WSR 22-03-065

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed January 14, 2022, 1:19 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-195 Taxes, deductibility.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending this rule to incorporate 2021 legislation, E2SHB 1477. This legislation established a tax to finance the national 988 system to enhance and expand behavioral health crisis and suicide prevention services. The rule addresses the deductibility of the tax.

Reasons Supporting Proposal: Updating this rule to provide the correct statutory citation, incorporate the new tax, and address its deductibility; will provide accurate information to readers.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060.

Statute Being Implemented: RCW 82.86.020.

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: Melinda Mandell, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1584; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 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 2021 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 Melinda Mandell, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone 360-534-1589, fax 360-534-1606, email Melinda4@dor.wa.gov, AND RECEIVED BY March 21, 2022.

January 14, 2022
Atif Aziz
Rules Coordinator

OTS-3567.1

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

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 ren-

dered, 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—	
<u>988 crisis hotline tax collected from subscribers.....</u>	<u>chapter 82.86 RCW;</u>
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 enhanced 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 enhanced 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 motor-boats.	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;
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.

[Statutory Authority: RCW 82.32.300 and 82.01.060. WSR 20-22-093, § 458-20-195, filed 11/3/20, effective 12/4/20. Statutory Authority: RCW 82.32.300. WSR 00-16-015, § 458-20-195, filed 7/21/00, effective 8/21/00; WSR 99-13-053, § 458-20-195, filed 6/9/99, effective 7/10/99; WSR 83-08-026 (Order ET 83-1), § 458-20-195, filed 3/30/83; Order ET 70-3, § 458-20-195 (Rule 195), filed 5/29/70, effective 7/1/70.]