

WSR 22-13-151

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed June 21, 2022, 10:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-24-074.

Title of Rule and Other Identifying Information: WAC 458-20-145 State and local sales and use tax—Sourcing retail sales—Sourcing for use tax purposes, is the rule that explains how to determine where sales of tangible personal property, retail services, extended warranties, digital products, digital codes, and leases of tangible personal property are sourced for purposes of the business and occupation tax, retail sales tax, and use tax.

Hearing Location(s): On July 27, 2022, at 1:00 p.m., virtual meeting. Contact Sierra Crumbaker at SierraC@dor.wa.gov for log-in/dial-in information.

Date of Intended Adoption: August 19, 2022.

Submit Written Comments to: Patrick Watkins, P.O. Box 47453, Olympia, WA 98504-7453, email patrickw@dor.wa.gov, fax 360-534-1539, by August 5, 2022.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is updating this rule for a number of reasons, including the following: (a) Incorporating existing provisions for sourcing sales of tangible personal property found in WAC 458-20-193 (Part 2), (b) incorporating provisions and examples that clarify the department's existing historical policies for use tax sourcing, (c) reorganizing and reformatting to current standards, (d) clarifying existing provisions and examples in the rule to ensure the department's existing historical policies are clearly represented, (e) retitling the rule to better represent the content and scope of the rule, and (f) clarifying or incorporating any other relevant or related information based on external stakeholder comments.

Reasons Supporting Proposal: Taxpayers will find that the updates to the rule will clarify statutory language while providing examples that will assist with reporting requirements for business and occupation tax, retail sales tax, and use tax.

Statutory Authority for Adoption: RCW 82.01.060(2), 84.32.300.

Statute Being Implemented: RCW 82.32.730, 82.04.040, 82.04.050, 82.08.020, 82.12.010, 82.12.020, 82.12.0255, 82.14.010, 82.14.030, 82.14.490.

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: Patrick Watkins, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1539; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how

costs were calculated. The proposed rule does not impose more-than-minor costs on taxpayers, as it does not propose any requirements not already provided for in statute. The proposed rule does not impose new fees, filing requirements, or recordkeeping guidelines that are not already established in statute.

June 21, 2022
Atif Aziz
Rules Coordinator

OTS-3481.5

AMENDATORY SECTION (Amending WSR 08-12-035, filed 5/30/08, effective 6/30/08)

WAC 458-20-145 ((Local sales and use tax.)) Sourcing retail sales for business and occupation tax and state and local retail sales tax—Sourcing of use tax for purchasers.

Part 1. General Information.

~~((1))~~ (101) Introduction. ~~((Effective July 1, 2008, Washington implements new rules governing how local retail sales taxes are sourced within Washington. See RCW 82.32.730 and 82.14.490. These rules govern where the local retail sales tax attributable to the sale of tangible personal property, retail services, extended warranties, and the lease of tangible personal property is sourced.))~~ This rule explains how to determine where sales of tangible personal property, retail services, extended warranties, digital products, digital codes, and leases of tangible personal property are sourced for purposes of the business and occupation (B&O) tax and the combined state and local retail sales tax. See RCW 82.32.730. This rule also explains how to determine where use occurs for purposes of sourcing combined state and local use tax.

(102) Organization of rule. This rule is divided into five parts as follows:

Part 1. General information.

Part 2. General sourcing rules for most retail sales of tangible personal property, extended warranties, digital products, digital codes, and other retail services.

Part 3. Special sourcing rules for retail sales of certain goods and services.

Part 4. Sourcing rules for leases and rentals of tangible personal property.

Part 5. Sourcing rules for use tax purposes - Purchasers.

(103) Other rules may apply. Readers may also want to refer to the following rules:

(a) WAC 458-20-153 Funeral establishments.

(b) WAC 458-20-15502 Taxation of computer software.

(c) WAC 458-20-15503 Digital products.

(d) WAC 458-20-158 Florists and nurserymen.

(e) WAC 458-20-211 Leases or rentals of tangible personal property, bailments.

(f) WAC 458-20-245 Taxation of competitive telephone service, telecommunications service, and ancillary service.

(104) **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 all situations must be determined after a review of all the facts and circumstances.

(105) **Definitions.** The following definitions apply to this rule:

(a) **"Extended warranty"** means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or at a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. See RCW 82.04.050(7).

(b) **"Florist"** means a person whose primary business activity is the retail sale of fresh cut flowers, potted ornamental plants, floral arrangements, floral bouquets, wreaths, or any similar products, used for decorative and not landscaping purposes. See RCW 82.32.730 (9)(e). **"Primary business activity"** means more than 50 percent of a person's gross sales revenue is derived from the activity.

(c) **"Lease"** and **"rental"** mean any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. See RCW 82.04.040 for a complete definition of the term "lease or rental."

(d) **"Motor vehicle"** generally means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. See RCW 46.04.320. A vehicle is a device capable of being moved upon a public highway. See RCW 46.04.670.

(e) **"Primary property location"** means the property's physical address as provided by the lessee and kept in the lessor's records maintained in the ordinary course of business, provided use of this address does not constitute bad faith. The primary property location will not change merely by intermittent use of the leased property in different local jurisdictions, e.g., use of leased business property on business trips or service calls to multiple jurisdictions.

(f) **"Purchaser"** has the same meaning as in RCW 82.08.010 and 82.12.010, and includes the purchaser's agent.

(g) **"Purchaser's donee"** means a person, other than the purchaser, to whom the purchaser directs shipment of goods (e.g., a gift recipient).

(h) **"Receive"** and **"receipt"** mean taking possession of, or having dominion and control over, tangible personal property and making first use of services. "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser. See RCW 82.32.730 (9)(f). The term also means making first use of digital automated services, or taking possession or making first use of digital goods or digital codes, whichever comes first.

(i) **"Retail sale"** has the same meaning as provided in RCW 82.04.050 and includes, but is not limited to, sales and leases of tangible personal property, sales of retail services, sales of extended warranties, digital goods, digital codes, and digital automated services.

(j) "Retail service" means those services described in RCW 82.04.050 as retail sales. This definition includes retail sales of labor and services rendered with respect to tangible personal property.

(k) "Semi-trailer" means every vehicle without motive power designed to be drawn by a vehicle, motor vehicle, or truck tractor and so constructed that an appreciable part of its weight and that of its load rests upon and is carried by such other vehicle, motor vehicle, or truck tractor. See RCW 46.04.530.

(l) "Shipping company" means a separate legal entity that ships, transports, or delivers tangible personal property on behalf of another, such as a common carrier, contract carrier, or private carrier either affiliated or unaffiliated with the seller or purchaser. A "shipping company" is not a division or branch of a seller or purchaser that carries out shipping duties for the seller or purchaser, respectively.

(m) "Source," "sourced," or "sourcing" refer to the location (as in a local taxing district, jurisdiction, or authority) where a sale or lease is deemed to occur and is subject to retail sales tax. It also, for purposes of this rule, refers to the location where "use" is deemed to occur for purposes of use tax paid by purchaser as a consumer. The department assigns location codes to identify the specific taxing locations that receive the local taxes. These location codes are used on tax returns to accurately identify the correct taxing location and tax rate.

Sellers and their agents are responsible for determining the appropriate tax rate for all their taxable retail sales ((taxable)) in Washington. Sellers and their agents are also responsible for collecting from their purchasers the correct amount of tax due upon each sale and remitting that tax to the department.

~~((Throughout this section the department provides a number of examples that 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 separately after a review of all of the facts and circumstances.~~

~~This section is divided into four subsections. Subsection (1) contains this introduction, a description of department resources available to assist taxpayers in performing local sales tax sourcing, and certain key terms. Subsection (2) describes Washington's sourcing rules that become effective July 1, 2008. Subsection (3) provides information relating to the sourcing of telecommunication services. Finally, subsection (4) briefly explains Washington's use tax rule.~~

~~(a) **What resources does the department offer to help sellers determine their local retail sales tax sourcing?** The department offers a number of resources to assist taxpayers in sourcing retail sales. These resources include:~~

~~(i) **The "Local Sales & Use Tax Flyer."** This publication is updated every quarter and is mailed to select taxpayers reporting on paper returns. It is also available online on the department's website at www.dor.wa.gov under "get a form or publication." It provides a listing of all local taxing jurisdictions, location codes, and their corresponding tax rates.~~

~~(ii) **The online sales and use tax rate look up application (GIS).** This is an online application that provides current and past sales and use tax rates and location codes based on an address or a selected location on a map. It also allows users to download data that they can~~

incorporate into their own systems to retrieve the proper tax rate for a specific address.

~~(iii) **Taxing jurisdiction maps.** The department has a selection of maps of various taxing jurisdictions that identify the boundaries of a specific taxing jurisdiction.~~

~~(b) **Of what key terms should I be aware when reading this section?**~~

~~(i) **"Receipt"** and **"receive"** mean taking possession of tangible personal property and making first use of services. "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser. See RCW 82.32.730 (8) (d).~~

~~(ii) **"Retail sale"** has the same meaning as provided in RCW 82.04.050 and includes the following three types of retail sales: Sales and leases of tangible personal property; sales of retail services; and sales of extended warranties.~~

~~(iii) **"Retail service"** means those services described in RCW 82.04.050 as retail sales. This definition includes retail sales of labor and services rendered with respect to tangible personal property.~~

~~The following is a nonexclusive list of retail services, many of which are addressed in detail in other rules adopted by the department:~~

- ~~• Constructing, remodeling, or painting buildings (e.g., see WAC 458-20-170);~~
- ~~• Land clearing and earth moving (e.g., see WAC 458-20-172);~~
- ~~• Landscape maintenance and horticultural services (e.g., see WAC 458-20-226);~~
- ~~• Repairing or cleaning equipment (e.g., see WAC 458-20-173);~~
- ~~• Lodging provided by hotels and motels (e.g., see WAC 458-20-166);~~
- ~~• Amusement and recreation services such as golf, bowling, swimming, and tennis (e.g., see WAC 458-20-183);~~
- ~~• Physical fitness services such as exercise classes, personal trainer services, and the use of exercise equipment (e.g., see WAC 458-20-183); and~~
- ~~• Abstract, title insurance, or escrow services (e.g., see WAC 458-20-156).~~

~~(iv) **"Tangible personal property"** means property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses and includes prewritten software. See RCW 82.08.010(7), 82.08.950, and 82.12.950 for more information.~~

~~(v) **"Extended warranty"** is an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. See RCW 82.04.050(7).~~

~~(vi) **"Motor vehicle"** generally means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. Motor vehicles are vehicles capable of being moved upon public ways. "Motor vehicle" includes a neighborhood electric vehicle as defined in RCW~~

46.04.357. "Motor vehicle" includes a medium-speed electric vehicle as defined in RCW 46.04.295. An electric personal assistive mobility device is not considered a motor vehicle. A power wheelchair is not considered a motor vehicle. For more information see RCW 46.04.320 "Motor vehicle" and RCW 46.04.670 "Vehicle."

~~(vii) "Primary property location" is the property's physical address as provided by the lessee and kept in the lessor's records maintained in the ordinary course of business, provided use of this address does not constitute bad faith. The primary property location will not change merely by intermittent use of the leased property in different local jurisdictions, e.g., use of leased business property on business trips or service calls to multiple jurisdictions.~~

~~(viii) "Transportation equipment" refers to:~~

~~(A) Locomotives and railcars used to carry people or property in interstate commerce; and~~

~~(B) Trucks and truck tractors with gross vehicle weight ratings of 10,000 pounds or greater, trailers, and semi-trailers, or passenger buses registered through an international registration plan and operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation (or other federal authority) to engage in carrying people or property in interstate commerce (International Registration Plan is a reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of total distance operated in all jurisdictions); and~~

~~(C) Aircraft operated by air carriers authorized and certificated by the U.S. Department of Transportation (or other federal or foreign authority) to carry people or property by air in interstate or foreign commerce; and~~

~~(D) Containers designed for use on and component parts attached or secured on the items described in (b) (viii) (A) through (C) of this subsection (1). RCW 82.32.730 (8) (e).~~

~~(2-)) (n) "Tangible personal property" means property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses and, for sales and use tax purposes, includes prewritten software. See RCW 82.08.010(7), 82.08.950, and 82.12.950 for more information.~~

~~(o) "Trailer" means every vehicle without motive power designed for being drawn by or used in conjunction with a motor vehicle constructed so that no appreciable part of its weight rests upon or is carried by such motor vehicle, but does not include a municipal transit vehicle, or any portion thereof. See RCW 46.04.620.~~

~~(p) "Transportation equipment" means:~~

~~(i) Locomotives and railcars used to carry people or property in interstate commerce;~~

~~(ii) Trucks and truck tractors with gross vehicle weight ratings of 10,000 pounds or greater, trailers, and semi-trailers, or passenger buses that are:~~

~~(A) Registered through an International Registration Plan (International Registration Plan is a reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of total distance operated in all jurisdictions);~~

~~(B) Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation (or other federal authority) to engage in carrying people or property in interstate commerce;~~

(iii) Aircraft operated by air carriers authorized and certificated by the U.S. Department of Transportation (or other federal or foreign authority) to carry people or property by air in interstate or foreign commerce; and

(iv) Containers designed for use on, and component parts attached or secured on, the items described in (p) (i) through (iii) of this subsection. RCW 82.32.730 (8) (e).

(106) **Other resources.** The department offers a number of resources to assist taxpayers in sourcing retail sales. These resources include:

(a) **The "Local Sales & Use Tax Flyer."** This publication is updated every quarter and is available online on the department's website at www.dor.wa.gov. The publication provides a listing of all local taxing jurisdictions, location codes, and their corresponding tax rates.

(b) **The online sales and use tax rate look up application (GIS).** This is an online application that provides current and past sales and use tax rates and location codes based on an address or a selected location on a map. It also allows users to download data that they can incorporate into their own systems to retrieve the proper tax rate for a specific address. Visit the department's website at dor.wa.gov for more information on this topic.

Part 2. General Sourcing Rules for Most Retail Sales.

(201) **State and local retail sales tax sourcing rules for most retail sales.** ((This subsection)) Part 2 of this rule describes Washington's retail sales tax general sourcing rules ((. Subsection (2) (a) of this section lists the general sourcing rules applicable to the sale of tangible personal property, retail services, and extended warranties. Subsection (2) (b) of this section provides special sourcing rules related to certain "florist sales" and the sale of watercraft; mobile, modular, and manufactured homes; and motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment. Subsection (2) (c) of this section addresses the sourcing rules applicable to leases of tangible personal property.

~~(a) **Sales of tangible personal property, retail services, and extended warranties.** This subsection describes the sourcing rules applicable to the sale of tangible personal property, retail services, and extended warranties.~~

These)) for sales of tangible personal property, extended warranties, other retail services, and transportation equipment. The sourcing provisions for Washington's retail sales tax in this Part 2 also apply to retailing B&O tax for retail sales. Part 3 of this rule details exceptions to the general sourcing guidance in this Part 2.

This part also generally applies to retail sales of digital products and digital codes. Readers should refer to WAC 458-20-15503, which extensively addresses the sourcing of digital products and codes. This rule does not address sourcing under facts that are unique to sales of digital products and codes.

General sourcing rules apply in a descending order of priority ((. This means that the seller first should determine if (a) (i) of this subsection (Rule 1 below) applies. If it does apply, then the seller must source the sale under Rule 1. If Rule 1 does not apply, then the seller must source the sale to the location required under sourcing Rule 2 (below), and so forth until the applicable sourcing rule is determined.

If the seller ships or delivers tangible personal property to a customer who receives that property outside Washington, the sale is deemed to have taken place outside Washington and is not subject to Washington state or local retail sales tax.

The following rules apply when sourcing retail sales in Washington:

~~(i) **Rule 1: Seller's business location.** If a purchaser receives tangible personal property, a retail service, or an extended warranty at the seller's business location, the sale is sourced to that business location.~~

~~In the case of retail services, this sourcing rule will generally apply where a purchaser receives retail services at the seller's place of business, e.g., an auto repair shop, a hotel or motel, a health club providing physical fitness services, an auto parking service, a dry-cleaning service, and a storage garage. While these types of retail services are usually received at the seller's place of business, if services are received at a location other than the seller's place of business, then alternate sourcing rules will apply.~~

~~(A) **Examples: Rule 1 – Tangible Personal Property.**~~

~~(1) Bill, a Tacoma resident, travels to Renton and purchases a ring from a jeweler located in Renton. Bill receives the ring at the Renton location. The seller must source the sale to the Renton location.~~

~~(2) Mary, a Walla Walla resident, buys a prewritten software program from a store located in Cheney. Mary receives a compact disc containing the software at the Cheney location. The seller must source the sale to the Cheney location.~~

~~(3) Trains, Inc., an Auburn business, buys a locomotive that qualifies as transportation equipment. Trains, Inc. receives the locomotive in Fife at the seller's place of business. The seller must source the sale to the Fife location.~~

~~(B) **Examples: Rule 1 – Retail Services.**~~

~~(1) Barbara, a Longview resident, takes her car to a mechanic shop located in Centralia. The mechanic services the car at the Centralia location. Several days later Barbara picks up the car from the Centralia location. The services are received in Centralia. The mechanic must source the sale to the Centralia location.~~

~~(2) Rex, a Seattle resident, drops off a roll of film at a photo developer located in Bellevue. Rex picks up the developed film from the Bellevue location. The services are received in Bellevue. The developer must source the sale to the Bellevue location.~~

~~(3) Bob, a Pasco resident, takes shirts to a drycleaner located in Kennewick. The drycleaner cleans and presses the shirts. Bob then picks up the shirts in Kennewick the following week. The services are received in Kennewick. The seller must source the sale to the Kennewick location.~~

~~(C) **Example: Rule 1 – Extended Warranties.**~~

~~(1) Saffron, a Des Moines resident, buys a computer from a Burien computer outlet. When purchasing the computer Saffron also purchases and receives a five-year extended warranty for the computer at the Burien outlet. The seller must source the sale of the extended warranty and computer to the Burien location.~~

~~(ii) **Rule 2: Tangible personal property, retail services, or extended warranties received at a location other than the seller's place of business.** If the purchaser receives tangible personal property, retail services, or an extended warranty at a location other than the seller's place of business (and sourcing Rule 1 therefore does not ap-~~

ply), then the sale must be sourced to the location where the purchaser, or the purchaser's donee (e.g., a gift), receives such property, retail service, or extended warranty. This location can be a location indicated in instructions, known to the seller, for delivery to the purchaser or donee.

Construction contractors, painters, plumbers, carpet layers (retailers who install what they sell), earth movers, and house wreckers are the types of retail service providers that typically will source sales under this sourcing Rule 2 (presuming they provide their services at a location other than their place of business).

(A) Examples: Rule 2 – Tangible Personal Property.

(1) Wade, a Seattle resident, buys furniture from a store located in Everett. Wade has the furniture delivered to his Seattle residence. Wade receives the furniture at his location in Seattle. The seller must source the sale to Wade's Seattle residence.

(2) Joanne, a Port Angeles business owner, purchases a prewritten software program online from a store located in Sequim. Joanne receives the software at her home address in Port Angeles. The seller has information identifying the location where the software is electronically received by Joanne in Port Angeles. The seller must source the sale to Joanne's Port Angeles home location.

(3) Jean, a Tumwater resident, buys prewritten software to detect online security threats. The seller is a store located in Bothell. As part of the purchase price, Jean receives prewritten software updates. All software is electronically delivered. The seller does not know where the software is electronically delivered. However, the purchase order discloses a ship-to address where the software will be received in Tumwater. The seller must source the sale to Jean's ship-to address as this address represents a delivery location indicated in instructions for delivery to Jean. The seller must source the sale to the Tumwater location according to the ship-to address.

(4) Karl, a Spokane Valley resident, buys a mattress at a store in Spokane. The merchant delivers the mattress from its warehouse located in Deer Park to Karl's home in Spokane Valley. Karl receives the mattress at his home location in Spokane Valley. The seller must source the sale to the Spokane Valley home location.

(5) George, an Olympia resident, orders a pizza from a restaurant located in Tumwater. The restaurant obtains George's Olympia address when taking the order. George receives the pizza at the Olympia address. The seller must source the sale to Olympia according to George's Olympia address.

(6) Gunther, a Sumner resident, places an order for towels with a catalog mail order outlet located in Tacoma. The seller delivers the towels to Gunther's home at a Sumner location from a warehouse in Fife. Gunther receives the towels at the Sumner location. The seller must source the sale to Gunther's Sumner home location.

(B) Examples: Rule 2 – Retail Services.

(1) Brett, a Tacoma resident, contracts with an Olympia painting firm to have his house repainted. The Olympia firm sends employees to Brett's home in Tacoma where they perform the painting. Brett receives the painting services at his home in Tacoma. The painting firm must source the sale of painting services to Brett's Tacoma home location.

(2) Julie, an Aberdeen resident, hires a construction contractor to build a new business facility in Kelso. Julie receives the construction services at the Kelso location. The contractor must source the services to the Kelso construction location.

~~(3) Gabe, a Shoreline resident, sends a clock to a repair business located in Auburn. The business repairs the clock and then delivers the clock to Gabe's home in Shoreline. Gabe receives the services at the Shoreline location. The repair service must source the sale to Gabe's Shoreline home location.~~

~~(C) **Example: Rule 2 -- Extended Warranties.**~~

~~(1) Tara, a Chelan resident, buys a computer over the internet. The retailer offers a five year extended warranty. Tara decides to purchase the extended warranty and sends the seller the appropriate paperwork. The seller then sends the extended warranty documents to Tara's home in Chelan. The sale of the extended warranty is sourced to the Chelan home location where Tara receives the warranty documents.~~

~~(D) **Additional Examples: Rule 2 -- Delivery Outside Washington, Gifts, and Receipt by a Shipping Company.**~~

~~(1) Alan, a Spokane resident, buys a mattress at a store in Spokane. The merchant delivers the mattress from its warehouse located in Deer Park to Alan's vacation home in Idaho. The mattress was received outside of Washington and is not subject to Washington state and local sales tax. The seller does not source the sale to Washington.~~

~~(2) Sandra, a Vancouver, Washington resident, buys a computer online from a merchant in Seattle. The computer is a gift for Tim, a student attending college in Pullman. The purchaser directs the seller to ship the computer to Tim's home address in Pullman. Tim receives the computer at the Pullman location. The merchant will source the sale based on the ship-to address in Pullman.~~

~~(3) Martha, a Wenatchee resident, travels to a gift shop in Leavenworth. Martha buys five (5) items for herself and five (5) gifts for friends. Martha takes possession of the five (5) items for herself at the gift shop. Martha then has the gift shop deliver the five (5) gifts to addresses located in Wenatchee. The seller will source the sale of the five (5) items purchased by Martha for herself to Leavenworth. The seller must source the five (5) gifts to Wenatchee according to the ship-to address where each donee receives its gift.~~

~~(4) Sheila, a Yakima resident, buys equipment from a Pasco retailer. Sheila arranges to have a shipping company pick up the equipment and deliver that equipment to Sheila in Yakima. In the purchase order Sheila notifies the seller that the equipment will be received at a ship-to address in Yakima. Tangible personal property is not considered received at the seller's place of business in cases where the purchaser arranges to have the goods picked up by a shipping company on its behalf. The seller must source this sale to Sheila's ship-to Yakima location where the equipment is received.~~

~~(iii) **Rule 3: Purchaser's address maintained in the seller's ordinary business records.** If neither sourcing Rule 1 nor Rule 2 apply, a retail sale is sourced to the purchaser's address as indicated in the seller's records maintained in the ordinary course of the seller's business, provided use of this address does not constitute bad faith.~~

~~**Example -- Rule 3.**~~

~~(1) Shannon buys prewritten software from a Bellevue seller by downloading the software from the seller's website. Shannon's location is unknown at the time of sale. However, the seller maintains a Seabeck address for Shannon in its business records. Because Shannon does not receive the software at the seller's place of business and the location of receipt is unknown, sourcing Rules 1 and 2 do not apply. The seller must source the sale to the address maintained in its ordinary business records for Shannon (the Seabeck address).~~

~~(iv) **Rule 4: Purchaser's address obtained at the consummation of sale.** If any of sourcing Rules 1 through 3 do not apply, the sale is sourced to the purchaser's address obtained during the consummation of sale. If no other address is available, this address may be the address included on the purchaser's payment instrument (e.g., check, credit card, or money order), provided use of this address does not constitute bad faith.~~

~~**Example -- Rule 4.**~~

~~(1) Eric buys prewritten software over the internet from a retail outlet located on Vashon Island. The seller transmits the prewritten software to an email address designated by Eric. The email address does not disclose Eric's location. Eric pays for the software by credit card. When entering the relevant credit card information, Eric discloses a residential address in Port Angeles to which the credit card is billed. Sourcing Rules 1 and 2 do not apply because Eric does not receive the software at the seller's business location and the seller does not know where the software is being received. Sourcing Rule 3 does not apply because the retail outlet does not have Eric's address on file in its ordinary business records. Therefore, the retail outlet must source the sale to the address related to the customer's credit card information given during the consummation of the sale. The retail outlet must source the sale to Eric's Port Angeles location.~~

~~(v) **Rule 5: Origin sourcing default rule.** If a seller is unable to source a sale under any of the sourcing Rules 1 through 4 above, or the seller has insufficient information to apply those rules, the default origin sourcing rule applies. Subsection (2)(b)(v)(A) through (C) of this section describes sourcing Rule 5 as it applies to the sale of tangible personal property, retail services, and extended warranties.~~

~~(A) **Origin sourcing: Tangible personal property.** If any of sourcing Rules 1 through 4 do not apply, the seller must source sales of tangible personal property to the address from which the property was shipped.~~

~~(B) **Origin sourcing: Electronically delivered prewritten software.** If any of the sourcing Rules 1 through 4 do not apply, the seller must source sales of electronically delivered prewritten computer software to the address location from which the computer software was first available for transmission by the seller. Locations that merely provide for the transfer of computer software are not address locations from which the computer software is first available for transmission.~~

~~(C) **Origin sourcing: Retail services and extended warranties.** If any of sourcing Rules 1 through 4 do not apply, the seller must source retail services and extended warranties to the address from which it provides the service or warranty.~~

~~(D) **Examples: Rule 5 -- Prewritten Software.**~~

~~(1) Rebecca purchases prewritten computer software electronically and requests that the software be delivered to a specified email address. The seller operates from a retail store located in Tacoma. The seller does not know the location where the software will be received and further does not have information about Rebecca's location in its ordinary business records. Additionally, Rebecca does not supply the seller with address information during the consummation of the sale. Thus, none of sourcing Rules 1 through 4 apply. This sale must be sourced under the default sourcing rule. The seller first made the prewritten software available for transmission at its Tacoma location. The seller will source the sale to that Tacoma location from which the~~

prewritten software was first available for transmission. This result will not change if the software is routed from a Tacoma server through a second server (either operated by the seller or some third party) located outside of the Tacoma location. Routing as used in this context refers to the transfer of prewritten software from one location to another location for retransmission to a final destination, and does not include transfers to another location where additional services or products may be added.

(2) Assume the facts in Example (1) directly above, except that Rebecca's order is submitted to the Tacoma location and the prewritten software is first available for transmission from a Bellevue location. The seller will source the sale to the Bellevue location.

(b) **Special sourcing rule: Florist sales and**), meaning that if the seller has information necessary to satisfy the requirement in (a) of this subsection, then those sourcing provisions must be applied. If the requirement in (a) of this subsection does not apply, the seller must consider whether the requirement in (b) of this subsection applies, and apply those sourcing provisions to the sale. If the requirement in (b) of this subsection does not apply, then the seller must use the same method in determining whether the requirements first in (c), second (d), or third (e) of this subsection apply respectively, and then apply the applicable sourcing provision. Retail sales must be sourced in this manner as follows:

(a) Business location of the seller;

(b) Other location of receipt by the purchaser;

(c) Purchaser's address maintained in the seller's ordinary business records;

(d) Purchaser's address obtained at the consummation (i.e., completion) of the sale;

(e) Origin sourcing.

(202) **Business location of the seller.** If a purchaser or a purchaser's donee receives tangible personal property, a retail service, an extended warranty, or a digital product at the seller's business location, the sale is sourced to that business location.

In the case of retail services, this sourcing rule will generally apply where a purchaser receives retail services at the seller's place of business, e.g., an auto repair shop where purchasers pick up the repaired goods at the repair shop location.

Example 1. Tangible personal property received at seller's Washington business location.

Facts: Bill, a Tacoma resident, travels to Renton and purchases a ring from a jeweler located in Renton. Bill receives the ring at the Renton location.

Conclusion: The seller must source the sale to its Renton business location.

Example 2. Tangible personal property received at seller's Washington business location, purchaser is a resident of another state.

Facts: Jane, an Idaho resident, purchases and takes receipt of a mattress at a retailer's physical store in Spokane, Washington.

Conclusion: Even though Jane takes the mattress back to Idaho for her use, the seller must source the sale to its Spokane business location.

Example 3. Tangible personal property received at seller's out-of-state business location, purchaser is a Washington resident.

Facts: Luggage Retailer has retail stores located in Washington and Oregon. John, a Washington resident, goes to Luggage Retailer's

store in Portland, Oregon to purchase luggage. John takes possession of the luggage at the store.

Conclusion: The seller must source the sale to its Portland business location where John took possession of the luggage. John is subject to use tax on the luggage upon his use of the luggage in Washington. Refer to Part 5 of this rule for more information regarding sourcing requirements for use tax imposed on the purchaser as a consumer.

Example 4. Tangible personal property received at seller's Washington business location using purchaser's own trucks, purchaser is an out-of-state business.

Facts: An out-of-state purchaser takes possession of tangible personal property in Vancouver, Washington and immediately delivers the tangible personal property to the purchaser's out-of-state location.

Conclusion: The sale is sourced to Washington because the purchaser received the tangible personal property in Washington.

Example 5. Tangible personal property received at seller's Washington business location by an affiliated shipping company (separate legal entity), receipt by purchaser is outside of Washington.

Facts: The purchaser in Example 4 uses a wholly owned "shipping company" (a legal entity separate from the purchaser) to receive purchased goods in Vancouver, Washington and immediately deliver them to the purchaser's out-of-state location.

Conclusion: Because "receive" and "receipt" do not include possession by the "shipping company," including a "shipping company" that is affiliated with the purchaser, the sale is sourced to the location where the purchaser receives the goods outside of Washington. The seller should maintain records that support the sourcing of the sale outside of Washington. See subsection (203)(b) of this rule for more details on recordkeeping requirements.

Example 6. Retail service received at seller's Washington business location.

Facts: Barbara, a Longview resident, takes her car to a mechanic shop located in Centralia. The mechanic services the car at the Centralia location. Several days later Barbara picks up the car from the Centralia location.

Conclusion: The seller must source the sale to its Centralia business location.

Example 7. Extended warranty received at seller's Washington business location.

Facts: Saffron, a Des Moines resident, buys a computer from a Burien computer retailer. When purchasing the computer, Saffron also purchases and receives a five-year extended warranty for the computer at the Burien location.

Conclusion: The seller must source the sale of the extended warranty and computer to its Burien business location.

(203) **Other location of receipt by the purchaser.** If the purchaser receives tangible personal property, retail services, digital products or codes, or an extended warranty at a location other than the seller's place of business, then the sale must be sourced to the location where the purchaser, or the purchaser's donee, receives the property, retail service, digital product or code, or extended warranty. This location may be indicated in instructions, known to the seller, for delivery to the purchaser or the purchaser's donee.

(a) Delivery terms, such as "FOB shipping point" and "FOB origin," and the Uniform Commercial Code's provisions defining sale or

where risk of loss passes, do not determine where the place of receipt occurs.

(b) The seller must retain documents used in the ordinary course of the seller's business to show how the seller knows the location where the purchaser or purchaser's donee received the goods. Acceptable proof includes, but is not limited to, the following documents:

(i) Instructions for delivery to the seller indicating where the purchaser wants the goods delivered, provided on a sales contract, sales invoice, or any other document used in the seller's ordinary course of business showing the instructions for delivery;

(ii) If shipped by a shipping company, a waybill, bill of lading, or other contract of carriage indicating where delivery occurs; or

(iii) If shipped by the seller using the seller's own transportation equipment, a trip-sheet signed by the person making delivery for the seller and showing:

(A) The seller's name and address;

(B) The purchaser's name and address;

(C) The place of delivery, if different from the purchaser's address; and

(D) The time of delivery to the purchaser together with the signature of the purchaser or its agent acknowledging receipt of the goods at the place designated by the purchaser.

Example 8. Tangible personal property delivered to purchaser's address.

Facts: Wade, a Seattle resident, buys furniture from a store located in Everett. Wade has the furniture delivered to his Seattle residence, where he will receive it.

Conclusion: The seller must source the sale to Seattle, the location where the purchaser received the furniture.

Example 9. Remotely accessed prewritten software.

Facts: Joanne, a Port Angeles business owner, purchases a pre-written software program online from a store located in Sequim. Joanne receives access to the software remotely, at her home address in Port Angeles. The seller has information identifying Port Angeles as the location where the software is accessed by the customer.

Conclusion: The seller must source the sale to Joanne's Port Angeles home location.

Example 10. Tangible personal property delivered to purchaser via third-party shipping company.

Facts: An out-of-state seller uses a third-party shipping company to ship goods to a customer located in Ellensburg. The seller first delivers the goods to the shipping company outside Washington using its own transportation equipment. The shipping company delivers the goods to Ellensburg.

Conclusion: The seller must source the sale to Ellensburg, the location of receipt by the purchaser. Even though the shipping company took possession of the goods outside of Washington, possession by the shipping company is not receipt by the purchaser for Washington tax purposes.

Example 11. Tangible personal property received by purchaser's affiliated shipping company outside Washington then delivered to purchaser.

Facts: A purchaser's affiliated shipping company arranges to pick up goods from an out-of-state seller's business location and deliver the goods to the purchaser's Yakima facility. The affiliated shipping company has the authority to accept and inspect the goods prior to transport on behalf of the buyer.

Conclusion: The seller must source the sale to Yakima, the location of receipt by the purchaser. Possession by a shipping company on behalf of a purchaser, including a shipping company affiliated with the purchaser, is not receipt for purposes of this rule. A shipping company's authority to accept and inspect goods on behalf of a buyer does not constitute receipt by the buyer.

Example 12. Purchaser exercises dominion and control over tangible personal property outside Washington, prior to receiving the tangible personal property in Washington.

Facts: An out-of-state manufacturer with nexus in Washington sells coffee mugs to a Washington-based purchaser in the business of selling small quantities of the goods under its own label in its own packaging. The purchaser directs the seller to deliver the goods to a third-party packaging plant located out-of-state for repackaging of the goods in the purchaser's own packaging. The purchaser then has a third-party shipping company pick up the goods at the packaging plant.

Conclusion: The purchaser takes constructive possession of the goods outside of Washington because it has exercised dominion and control over the goods by having them repackaged at an out-of-state packaging facility before shipment to Washington. The seller must source the sale to the location of the out-of-state packaging plant.

Example 13. Retail service received at location of the purchaser.

Facts: Brett, a Tacoma resident, hires ABC Painting Co., located in Olympia, to paint his home. ABC's employees perform the painting services at Brett's home in Tacoma.

Conclusion: The seller must source the sale to Tacoma, the location where the customer received the retail service.

Example 14. Retail repair service received at the location where repaired goods are received.

Facts: Gabe, a Shoreline resident, sends a clock to a repair business located in Auburn. The business repairs the clock and then delivers the clock to Gabe's home in Shoreline.

Conclusion: The seller must source the sale to Shoreline, the location where the customer received the repaired clock.

Example 15. Retail repair service received at the location where repaired goods are received (repair service in state, receipt of repaired goods out-of-state).

Facts: Assume the facts in Example 14, except that Gabe is a resident of Nevada, and that the repaired clock will be delivered by the seller to Gabe's home in Las Vegas.

Conclusion: The seller must source the sale to Las Vegas, NV, the location where the customer received the repaired clock.

Example 16. Extended warranty delivered to location of the purchaser.

Facts: Tara, a Chelan resident, buys a computer over the internet. The retailer offers a five-year extended warranty. Tara decides to purchase the extended warranty and sends the seller the appropriate paperwork. The seller then sends the extended warranty documents to Tara's home in Chelan.

Conclusion: The seller must source the sale to Chelan, the location where the customer received the extended warranty documents.

Example 17. Tangible personal property delivered to location of purchaser's donee.

Facts: Sandra, a Vancouver, Washington resident, buys a computer online from a merchant in Seattle. The computer is a gift for Tim, a student attending college in Pullman. The purchaser directs the seller

to ship the computer to Tim's home address in Pullman. Tim receives the computer at the Pullman location.

Conclusion: The seller must source the sale to Pullman, the location of receipt by the purchaser's donee.

(204) **Purchaser's address maintained in the seller's ordinary business records.** If the sourcing rules described in subsections (202) and (203) of this rule do not apply, a retail sale is sourced to the purchaser's address as indicated in the seller's records maintained in the ordinary course of the seller's business, provided use of this address does not constitute bad faith.

Example 18. Tangible personal property picked up by unaffiliated shipping company from seller's business location, no delivery information available.

Facts: A hotel located in Shelton purchases bathroom towels from a seller located in Bremerton. Rather than having the towels delivered by the seller, the purchaser uses an unaffiliated shipping company to pick up the towels at the seller's business location and deliver them to the purchaser in Shelton. The seller is not able to obtain delivery information for the purchase; however, the seller maintains the address of the purchaser for billing purposes.

Conclusion: The seller must source the sale to Shelton using the purchaser's address information retained in the seller's ordinary business records.

(205) **Purchaser's address obtained at the consummation of sale.** If the sourcing rules described in subsections (202), (203), and (204) of this rule do not apply, the sale must be sourced to the purchaser's address obtained during the consummation of sale. If no other address is available, this address may be the address included on the purchaser's payment instrument (e.g., check, credit card, or money order), provided use of this address does not constitute bad faith.

Example 19. Prewritten software delivered electronically, location of purchaser's receipt is unknown, billing address information available to seller.

Facts: Eric buys prewritten software over the internet from a retail outlet located on Vashon Island. The seller transmits the prewritten software to an email address designated by Eric. The email address does not disclose Eric's location. Eric pays for the software by credit card. When entering the relevant credit card information, Eric discloses a residential address in Port Angeles to which the credit card is billed.

Conclusion: The seller must source the sale to Port Angeles, the purchaser's credit card billing address obtained by the seller at the consummation of the sale.

(206) **Origin sourcing.** If the sourcing rules described in subsections (202), (203), (204), and (205) of this rule do not apply, the sale must be sourced to the physical address from which the:

- (a) Tangible personal property was shipped;
- (b) Digital product, digital code, or computer software was first available for transmission by the seller; or
- (c) Extended warranty, digital automated service, or other retail service was provided, disregarding any location that merely provided the digital transfer of the product sold.

Example 20. Prewritten software delivered electronically, location of purchaser's receipt is unknown, purchaser address information is not available.

Facts: Rebecca purchases prewritten computer software electronically and requests that the software be delivered to a specified email

address. The seller operates from a retail store located in Tacoma. The seller does not know the location where the software will be received and further does not have information about Rebecca's location in its ordinary business records. Additionally, Rebecca does not supply the seller with address information during the consummation of the sale.

Conclusion: The seller must source the sale to Tacoma, the location where the computer software was first available for transmission by the seller. This result will not change if the software is routed from a Tacoma server through a second server (either operated by the seller or some third party) located outside of Tacoma. Routing as used in this context refers to the transfer of prewritten software from one location to another location for retransmission to a final destination, and does not include transfers to another location where additional services or products may be added.

Part 3. Special Sourcing Rules for Retail Sales of Certain Goods and Services.

(301) Sales of watercraft; sales of modular, mobile, and manufactured homes; and sales of motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment. ((If you are a "florist" making sales or you are making a retail sale of watercraft; modular, mobile, or manufactured homes; or motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment (excluding leases and rentals), you must source the sale to the location at or from which delivery is made. For specific information concerning "florist sales," who qualifies as a "florist," and the related sourcing rules see RCW 82.32.730 (6) (d) and (8) (c) as amended by Senate Bill No. 6799, chapter 324, Laws of 2008.

When the sale of goods is delivered into Washington from a point outside the state and a local in-state facility, office, outlet, agent or other representative (even though not formally characterized as a "salesperson") of the seller participates in the transaction in some way, such as by taking the order, then the location of the local facility, etc., will determine the place of sale for purposes of the local sales tax. However, if the seller, the seller's agent or the seller's representative maintains no local in-state facility, office, outlet or residence from which business in some manner is conducted, the local tax must be determined by the location of the customer.

Example: Special Sourcing Rule.

(1) Ben, a Federal Way purchaser, buys a car from a dealer in Fife. The customer has the option of picking up the car on the lot in Fife or having it delivered to his residential address in Federal Way. Ben asks to have the car delivered to the Federal Way location. The dealer must source the sale of the car to the dealer's location in Fife from which the car was delivered.

(c) ~~Leases of tangible personal property.~~ "Lease" and "rental" mean any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. For more information concerning "leases" and "rentals" see RCW 82.04.040.)

(a) **Seller's location within Washington.** Sales of the types of tangible personal property described in this subsection must be sourced to the location at or from which delivery is made in cases where the seller's location is within Washington.

(b) **Seller's location outside Washington, participating seller representative within Washington.** Sales of the types of tangible personal property described in this subsection that are delivered into

Washington from a point outside the state, where a local in-state facility, office, outlet, agent or other representative (even though not formally characterized as a "salesperson") of the seller participates in the transaction in some way, such as by taking the order, must be sourced to the location of the local facility, etc., for purposes of the local sales tax.

(c) **Seller's location outside Washington, no participating seller representative within Washington.** Sales of the types of tangible personal property described in this subsection that are delivered into Washington from a point outside the state, where no local in-state facility, office, outlet, agent or other representative (even though not formally characterized as a "salesperson") of the seller participates in the transaction, must be sourced to the location of the customer for purposes of the local sales tax.

Example 21. Motor vehicle delivered to the location of the purchaser.

Facts: Ben, a Federal Way purchaser, buys a car from a dealer in Fife. The customer has the option of picking up the car on the lot in Fife or having it delivered to his residential address in Federal Way. Ben asks to have the car delivered to the Federal Way location.

Conclusion: The seller must source the sale to Fife, the dealer's location from which the car was delivered.

(302) **Florist sales.**

(a) **Florist sales must be sourced in a manner consistent with:**

(i) The sourcing requirements described in subsection (301)(a) and (b) of this section; or

(ii) In the case of a sale in which one florist takes an order from a customer and then communicates that order to another florist who delivers the items purchased to the place designated by the customer, the location at or from which the delivery is made to the customer is deemed to be the location of the florist originally taking the order. See RCW 82.32.730 (7)(d).

(b) **Collection of retail sales tax:** On all orders taken by a Washington florist and communicated to a second florist, either in Washington or at a point outside the state, the florist taking the order will be responsible for the collection of the retail sales tax from the customer placing the order. See WAC 458-20-158.

Example 22. Floral arrangement delivered to a purchaser's donee in Washington, seller located in Washington.

Facts: Wade, an out-of-state resident, purchases a floral arrangement directly from a florist in Renton. The purchase arrangement does not involve multiple florists. Wade arranges for the florist to deliver the arrangement to a hospital located in Seattle, where his brother Frank is a patient.

Conclusion: The seller must source the sale to Renton, the location at or from which delivery is made. Because the seller is physically located in Washington and the purchase was made directly between the buyer and the florist, the sale is sourced to the location from which delivery was made.

Example 23. Floral arrangement delivered to a purchaser in Washington, originating florist located in Washington, delivering florist located out-of-state.

Facts: Michelle, a Tacoma resident, purchases a floral arrangement from an online florist, Beautiful Flowers, LLC. Beautiful Flowers, LLC is located in Seattle, but has contractual agreements with florists throughout the country, whereby the contracted florist will prepare and deliver floral arrangements to Beautiful Flowers LLC's

customers as a subcontractor. Michelle arranges for the flowers to be delivered to her brother in Camas. The floral arrangement is prepared and delivered by a florist located in Portland, Oregon.

Conclusion: The seller would source the sale to Seattle and collect retail sales tax as the location at which the florist originally took the order was in Washington. RCW 82.32.730 (7)(d) specifies that the sale is sourced to the location of the florist originally taking the order.

(303) **Telecommunications service and ancillary services.** Sales of telecommunications service and ancillary services are defined as retail sales in RCW 82.04.050. Sellers must source these services under the sourcing provisions located in RCW 82.32.520. See RCW 82.04.065, 82.04.530, and 82.04.535 for more information about telecommunication services and ancillary services, and the calculation of gross proceeds for purposes of B&O tax.

Part 4. Sourcing Rules for Leases and Rentals of Tangible Personal Property.

(401) The terms "lease" and "rental" are used interchangeably throughout this subsection ((2)(e)). This subsection ((2)(e)) provides state and local retail sales tax sourcing guidance for lessors (who lease) of tangible personal property. Persons who rent or lease tangible personal property to consumers are required to collect retail sales tax on the amount of each rental or lease payment at the time the payment becomes due. In addition, persons who rent or lease tangible personal property are generally subject to Washington's B&O tax. See WAC 458-20-211.

((i)) (a) **How do I source lease payments attributable to the lease of transportation equipment?** If you are leasing transportation equipment, you must source the lease payments attributable to that transportation equipment (under sourcing Rules 1 through 5 above as a retail sale. See subsection (1)(b)(viii) of this section for a description of transportation equipment.

(ii)) as follows:

(i) For purposes of retail sales tax, you must source the lease payments attributable to the lease of transportation equipment following the sourcing requirements for retail sales discussed in Part 2 of this rule. The sourcing requirements for retail sales discussed in Part 2 of this rule apply to both single payment leases and periodic payment leases of transportation equipment. See RCW 82.32.730(4).

(ii) For purposes of B&O tax, you must source the lease payments attributable to the lease of transportation equipment as described in Excise Tax Advisory 3185.2014.

(b) **How should I source lease payments attributable to the lease of motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment?** If you are leasing a motor vehicle, trailer, semi-trailer, or aircraft that does not qualify as transportation equipment, you must source the lease payments (under this subsection (2)(e)(ii).

(A)) as follows:

(i) **Leases that require recurring periodic payments.** If the lease requires recurring periodic payments, you must source each periodic payment to the "primary property location" of the leased property. ((See subsection (1)(b)(vii) of this section for a description of primary property location.)) The "primary property location" will not change by intermittent use of the leased property in different juris-

dictions, e.g., use of leased business property on business trips or service calls to multiple local jurisdictions.

~~((B))~~ (ii) Leases that do not require recurring periodic payments. If the lease does not require recurring periodic payments, you must source the single lease payment ~~((under sourcing Rules 1 through 5 above as a retail sale.~~

~~(C) Examples:~~

~~(1) Rich, a Fall City customer, leases a car from a dealer in Duvall. Rich leases the car for a period of one year. The car does not qualify as transportation equipment. Rich provides the dealer with his residential address in Fall City where he keeps the car. Rich makes monthly periodic payments throughout the term of the lease. Rich indicates the primary property location for the car is his residence in Fall City. The Fall City location is recorded in the store's business records. The periodic lease payments will be sourced to the residential primary property location in Fall City. If Rich were to move to Seattle during the term of the lease and notify the dealer of a change in the car's primary property location, the dealer would source any lease payments subsequent to that change in primary property location to Seattle.~~

~~(2) Amanda, a Tacoma business owner, rents a trailer for a period of one week and no periodic payments are required under the lease. The trailer does not qualify as transportation equipment. Amanda receives the trailer at a business location in Tacoma. The seller will source the sale to the Tacoma business location.~~

~~(iii)) following the sourcing requirements discussed in Part 2 of this rule.~~

Example 24. Motor vehicle lease with recurring periodic payments.

Facts: Rich, a Fall City customer, leases a car from a dealer in Duvall. Rich leases the car for a period of one year. The car does not qualify as transportation equipment. Rich provides the dealer with his residential address in Fall City where he keeps the car. Rich makes monthly periodic payments throughout the term of the lease. Rich indicates the primary property location for the car is his residence in Fall City. The Fall City location is recorded in the store's business records. The first monthly lease payment is due at the end of the month following the date in which Rich acquired the vehicle.

Conclusion: The seller (lessor) must source the periodic lease payments to Fall City, the residential primary property location of the purchaser (lessee). If Rich changes the vehicle's primary location during the term of the lease and notifies the lessor, the lessor must source any subsequent lease payments to the primary location of the vehicle.

Example 25. Vehicle trailer lease that does not involve recurring periodic payments.

Facts: Amanda, a Tacoma business owner, rents a trailer for a period of one week and no periodic payments are required under the lease. The trailer does not qualify as transportation equipment. Amanda receives the trailer at a business location in Tacoma.

Conclusion: The seller (lessor) must source the sale to Tacoma, the seller's business location where the trailer was received by the purchaser (lessee).

(c) How do I source lease payments for all other tangible personal property? ~~((If you lease))~~ For leases of tangible personal property not described in (a) or (b) of this subsection ((2)(e)(i) or (ii) of this section, you), sellers must source ((your)) lease payments ((under this subsection (2)(e)(iii)).

~~(A))~~ as follows:

~~(i)~~ **Lease that requires recurring periodic payments.** If ~~((the))~~ a lease of tangible personal property requires recurring periodic payments, ~~((you))~~ sellers must source the first periodic lease payment ~~((on that lease under sourcing Rules 1 through 5 as a retail sale. You must then source all))~~ following the sourcing requirements discussed in Part 2 of this rule. Sellers must source subsequent periodic payments to the primary property location for ~~((each period covered by such periodic payments. See subsection (1)(b)(vii) of this section for a description of primary property location))~~ the relevant payment period. The primary property location will not change by intermittent use of the leased property in different local jurisdictions, e.g., use of leased business property on business trips or service calls to multiple local jurisdictions.

~~((B))~~ **(ii) Leases that do not require recurring periodic payments.** If ~~((the))~~ a lease of tangible personal property does not require recurring periodic payments, ~~((you))~~ sellers must source the single payment ~~((under sourcing Rules 1 through 5 as a retail sale.~~

~~(C)~~ **Examples:**

~~(1)~~ Mark, a Gig Harbor resident, leases furniture from a store in Bremerton. The furniture will be leased for twelve months. The store delivers the furniture to Mark's home address in Gig Harbor. Mark indicates the primary property location for the equipment is his home address in Gig Harbor. The Gig Harbor location is recorded in the store's business records. The customer makes monthly periodic payments for the term of the lease. The first periodic payment must be sourced to Gig Harbor where Mark receives the furniture. The store must then source all subsequent periodic payments to Gig Harbor, which represents the primary property location recorded in the store's ordinary business records.

~~(2)~~ Brad, a Pasco business owner, leases furniture from a store in Spokane. Brad picks up the furniture in Spokane and makes the initial periodic payment on the lease. The furniture is leased for a period of twelve months. Brad indicates the primary property location for the equipment is a business address in Pasco. The Pasco location is recorded in the store's business records. Brad then makes monthly periodic payments for the term of the lease. The first periodic payment must be sourced to Spokane where Brad received the furniture. The store must source the subsequent periodic payments to the Pasco primary property location.

~~(3)~~ Alison, a Seattle business owner, leases equipment from a store in Issaquah. Alison picks up the equipment in Issaquah and makes an initial periodic payment on the lease. The equipment is used in work primarily performed in Washington, but the equipment is also taken out intermittently on a number of service calls made in Oregon. Alison indicates the primary property location for the equipment is a business address in Seattle. The Seattle location is recorded in the store's business records. The equipment is leased for a period of one year. Alison makes monthly periodic payments for the term of the lease. The first periodic payment must be sourced to Issaquah where the equipment is received. The store must source the subsequent periodic payments to Seattle, which represents the primary property location. Alison's intermittent use of the equipment in other jurisdictions does not change the primary property location of the equipment.

~~(4)~~ Amelia, a Pasco business owner, leases equipment from a store located in Pasco. Amelia picks up the equipment in Pasco, making an initial periodic payment on the lease. The lease is for a period of

one year. During the first six months of the lease, Amelia indicates the primary property location for the equipment is a business address in Walla Walla. For the second six months of the lease, Amelia indicates the primary property location is a business address in Leavenworth. The store records the primary property locations in its business records. The store must source the initial periodic payment to Pasco where Amelia received the equipment. The store must source all other periodic lease payments covering the first six months of the lease to the primary property location recorded for Walla Walla. The store must source those periodic lease payments covering the last six months of the lease to the primary property location in Leavenworth.

(5) Brian, a North Bend business owner, rents a backhoe from Construction Rentals located in Lynnwood. The lease period is 45 days and the lease requires a single lease payment. Brian pays the entire lease amount at the time of pickup. The customer picks up the equipment in Lynnwood and takes it to a job site in DuPont. Construction Rentals must source the sale to the location in Lynnwood where Brian receives the backhoe.

(6) Lisa, an Olympia business owner, rents a pressure washer from Rental Co. located in Lacey. The rental period is one day and no periodic payments are required under the lease. Lisa picks up the equipment in Lacey and takes it to a job site in Yelm. Sales tax is sourced to the seller's location in Lacey. If Rental Co. delivered the pressure washer directly to Lisa at the job site in Yelm, the sale would have been sourced to the location of the job site in Yelm.

~~(3) Telecommunications services.~~

~~**Where can I find information related to the sourcing and sale of telecommunication services?** Sales of telecommunication services and ancillary services are defined as retail sales in RCW 82.04.050. Sellers must source these services under the sourcing provisions located in RCW 82.32.520. See RCW 82.04.065 for more information about telecommunication services and ancillary services.~~

~~(4)) following the sourcing requirements described in Part 2 of this rule.~~

~~**Example 26. Lease of tangible personal property with periodic lease payments, tangible personal property picked up at seller's location, tangible personal property intermittently used out-of-state.**~~

~~**Facts:** Alison, a Seattle business owner, leases equipment from a store in Issaquah. Alison picks up the equipment in Issaquah and makes an initial periodic payment on the lease. The equipment is used primarily in Washington, but the equipment is intermittently used in Oregon throughout the term of the lease. Alison indicates the primary property location for the equipment is a business address in Seattle. The Seattle location is recorded in the store's business records. The equipment is leased for a period of one year.~~

~~**Conclusion:** The seller (lessor) must source the initial periodic payment to Issaquah, the location where the equipment was received. The seller must source the subsequent periodic payments to Seattle, the primary property location of the equipment. Alison's intermittent use of the equipment in other jurisdictions does not change the primary property location of the equipment.~~

~~**Example 27. Lease of tangible personal property with periodic lease payments, tangible personal property delivered to purchaser, primary location of property changes during the term of the lease.**~~

~~**Facts:** Amelia, a Pasco business owner, leases equipment from a store located in Pasco for a period of one year. The leased equipment is delivered by the lessor to Amelia and received at the primary prop-~~

erty location of the equipment in Walla Walla. Amelia indicates this will be the primary property location for a period of six months. For the second six months of the lease, Amelia indicates the primary property location is a business address in Leavenworth. The store records the primary property locations in its business records.

Conclusion: The seller (lessor) must source the initial periodic payment to Walla Walla, the location where Amelia received the equipment. The seller must source subsequent periodic lease payments covering the first six months of the lease to Walla Walla, the primary property location. The seller must source periodic lease payments covering the last six months of the lease to Leavenworth, the primary property location.

Part 5. Sourcing Rules for Use Tax Purposes - Purchasers.

(501) **Use tax imposed on the consumer.** ((How is use tax sourced in Washington? Where a seller does not have an obligation to collect Washington sales tax, the tangible personal property or service sold by that person may be subject to use tax under chapter 82.12 RCW et seq. This use tax is sourced to the place of first use and is payable by the purchaser. The seller may be required to collect use tax pursuant to the requirements of RCW 82.12.040.)) Where an article of tangible personal property, an extended warranty, retail service, pre-written computer software, digital product, or digital code is acquired by a consumer in this state in any manner, including through a casual or isolated sale, or as a by-product used by the manufacturer thereof, use tax is generally due, unless an exemption applies or retail sales tax has been paid. RCW 82.12.020. The rate of use tax is cumulative of a state and local component, where the local component varies by local jurisdiction.

(502) **Sourcing rules.** Sourcing rules for use tax vary depending on the object of use, as follows:

(a) **Tangible personal property,** except for natural gas and manufactured gas, is sourced to the location where the taxpayer makes first taxable use of the article of tangible personal property as a consumer. This includes the location of installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article of tangible personal property within this state. RCW 82.12.010. "First taxable use" is described in the examples below.

Example 28. Use of a motor vehicle by a Washington resident, vehicle registration and location of the vehicle's primary use.

Facts: Sandra, a Spokane resident, purchases a motor vehicle from a private seller located in Seattle. Retail sales tax was not collected by the private seller. Title to the vehicle is transferred in the King County Auditor's office. Sandra will primarily use the vehicle in Spokane and will drive the vehicle to her residence in Spokane upon completion of the sale. Sandra will list the Spokane address on her vehicle registration and new vehicle insurance policy.

Conclusion: The King County Auditor's office will collect use tax from Sandra based on the combined state and local use tax rate for Spokane, as Sandra's use of the vehicle in Seattle is insufficient to establish first taxable use in that location for purposes of the local portion of the use tax.

Example 29. Use of a motor vehicle by a Washington resident, purchase of vehicle out-of-state.

Facts: Jerry, a Seattle resident, purchases a motor vehicle from a car dealership located in Oregon. The dealership is not registered

with the department and does not collect retail sales tax from Jerry at the time of sale. Jerry drives the vehicle via Interstate 5, from Portland, Oregon to Seattle. Jerry subsequently registers the vehicle with the King County Auditor's office upon returning with the vehicle to Seattle.

Conclusion: The King County Auditor's office will collect use tax from Jerry based on the combined state and local use tax rate for Seattle. Although Jerry drove the vehicle in Clark County, the use was insufficient to establish first taxable use in that location for purposes of the local portion of the use tax.

Example 30. Use of a personal watercraft in Washington, purchase of watercraft out-of-state.

Facts: Cameron, a Port Townsend resident, purchases a 42-foot sailboat from a boat dealer in Portland, Oregon. Cameron takes possession of the sailboat at the dealer's location in Portland and does not pay Washington's retail sales tax. Cameron navigates the watercraft down the Columbia River and around the Olympic Peninsula, ultimately arriving in Port Townsend. Cameron entered into a long-term moorage agreement and lists the Port Townsend marina as an additional insured party on his current watercraft insurance policy.

Conclusion: The sailboat is subject to use tax based on the combined state and local use tax rate for Port Townsend. Although Cameron sailed the watercraft in Washington on the Columbia River, the use was insufficient to establish first taxable use in that location for purposes of the local portion of the use tax.

Example 31. Use of a personal aircraft in Washington by a Washington resident, possession taken outside of Washington.

Facts: John, a Bremerton resident, purchases an aircraft from a dealer located in Sacramento, California. John takes possession of the aircraft in California and flies it back to Washington. Prior to arriving at the Bremerton airport, where John has secured a permanent hangar or storage space for the aircraft, John lands the aircraft in Pullman, Washington. While in Pullman he refuels the aircraft before continuing on to the final destination in Bremerton.

Conclusion: The aircraft is subject to use tax based on the combined state and local use tax rate for Bremerton. Although John fueled the aircraft in Pullman, the use was insufficient to establish first taxable use in that location for purposes of the local portion of the use tax.

Example 32. Use of tangible personal property by a Washington business, purchase of tangible personal property out-of-state.

Facts: Grace, an Issaquah business owner, purchases a trailer-mounted generator from a dealer located in Oregon without paying retail sales tax. Grace tows the generator with her own motor vehicle to the company warehouse located in Issaquah. The company stores the generator at their warehouse throughout the year and operates it at various worksites throughout the state.

Conclusion: The King County Auditor's office will collect use tax based on the combined state and local use tax rate for Issaquah, the location where the taxpayer stores the generator. Although Grace towed the generator through other jurisdictions prior to arriving at the business' Issaquah warehouse, the use was insufficient to establish first taxable use in another location for purposes of the local portion of the use tax. Even though Grace operates the generator in multiple locations, the company warehouse is the location where first taxable use as a consumer occurs.

Example 33. Use of tangible personal property by a Washington resident, purchase of tangible personal property out-of-state.

Facts: Alex, a Wenatchee resident, purchases an electric bicycle from a dealer in Montana, without paying retail sales tax. Alex takes possession of the electric bicycle in Montana and transports it back to Wenatchee in their own motor vehicle where it will be stored in their garage. Alex rides the electric bicycle in Wenatchee and various other locations throughout the state.

Conclusion: The electric bicycle is subject to use tax based on the combined state and local use tax rate for Wenatchee, the location where Alex stores the electric bicycle. Transporting the electric bicycle to Wenatchee was insufficient to establish first taxable use in another location for purposes of the local portion of the use tax.

Example 34. Use of tangible personal property by an out-of-state service provider.

Facts: ABC Testing, an out-of-state medical testing company, provides services to Washington customers. ABC sends a customer of its services, a Sequim resident, a container that the customer uses to provide a saliva sample. The container is shipped to Sequim and back out of Washington using unaffiliated shipping companies. ABC owns the container at all times and its customers are subject to ABC terms and conditions regarding their use of the containers. ABC discards the container upon receipt and testing of the customer's sample at their out-of-state business location.

Conclusion: Use tax is due and sourced to Sequim, the location where the testing company made the tangible personal property available for their customer's use.

(b) **Retail services,** which include the installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property for consumers, are sourced to the location where the taxpayer takes or assumes dominion or control over the article of tangible personal property upon which the service was performed. Dominion and control includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state.

Example 35. Tangible personal property repaired by out-of-state business who is not required to register or collect Washington taxes.

Facts: Pamela, a resident of Sequim, sends an antique oil painting to an out-of-state business who will refurbish and repair the painting. The out-of-state repairer does not have nexus with Washington and is not required to register with the state or collect Washington's sales tax. Upon completion of the restoration, the repairer sends the painting to Pamela's residence, via a third-party shipping company.

Conclusion: Pamela must report and pay use tax. Pamela must source the repair services to Sequim, the location where first taxable use of the repaired painting occurred as a consumer.

(c) **Extended warranties** are sourced to the location where the taxpayer, after acquiring the extended warranty, first takes or assumes dominion or control over the article of tangible personal property to which the extended warranty applies.

Example 36. Extended warranty purchased from an out-of-state business who is not required to register or collect Washington taxes.

Facts: Michael, a resident of Longview, purchases a laptop computer from an online retailer, who is not registered with the state or required to collect Washington's taxes. The retailer sends Michael the laptop computer to his residential address in Longview via a third-

party shipping company. At the time of the laptop's purchase, Michael also purchases an extended warranty. The retailer sends Michael an email which contains the extended warranty in electronic form.

Conclusion: Michael must report and pay use tax. Michael must source his use of the laptop computer and the extended warranty to Longview, the location where Michael first assumed dominion and control over the property and extended warranty, establishing first taxable use in this state as a consumer.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 08-12-035, § 458-20-145, filed 5/30/08, effective 6/30/08. Statutory Authority: RCW 82.32.300. WSR 83-07-032 (Order ET 83-15), § 458-20-145, filed 3/15/83; Order ET 75-1, § 458-20-145, filed 5/2/75; Order ET 70-3, § 458-20-145 (Rule 145), filed 5/29/70, effective 7/1/70.]