

WSR 23-23-159

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed November 21, 2023, 10:25 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-134 Commercial or industrial use and 458-20-178 Use tax and the use of tangible personal property.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is updating WAC 458-20-134 and 458-20-178 due to changes from recent legislation, SHB 1764 (2023). The legislation amended RCW 82.04.450 to provide a valuation method for asphalt and aggregate used in public road construction.

Additionally, the update includes several grammar and punctuation changes to enhance clarity and readability.

Reasons Supporting Proposal: The update is to conform the rule to SHB 1764, which passed during the 2023 legislative session.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060.

Statute Being Implemented: RCW 82.12.010 and 82.04.450.

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: Brett Granemann, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1532; 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.

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is appropriate for this rule update because the department is incorporating changes resulting from 2023 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 Brett Granemann, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1532, fax 360-534-1606, email brettg@dor.wa.gov, AND RECEIVED BY January 22, 2024.

November 21, 2023
Atif Aziz

OTS-5089.1

AMENDATORY SECTION (Amending WSR 22-04-026, filed 1/24/22, effective 2/24/22)

WAC 458-20-134 Commercial or industrial use. (1) Definitions.

(a) The term "commercial or industrial use" means the following uses of products, including by-products, by the same person that extracted or manufactured them:

(i) Any use as a consumer; and

(ii) ~~((The))~~ Manufacturing of articles, substances, or commodities. (RCW 82.04.130.)

(b) The term "biomass fuel" means wood waste and other wood residuals, including forest derived biomass, but does not include firewood or wood pellets. "Biomass fuel" also includes partially organic by-products of pulp, paper, and wood manufacturing processes.

(2) **Examples of commercial or industrial use.** The following are examples of commercial or industrial use:

(a) The use of lumber by the manufacturer of that lumber to build a shed for its own use.

(b) The use of a motor truck by the manufacturer of that truck as a service truck for itself.

(c) The use by a boat manufacturer of patterns, jigs, and dies ~~((which))~~ that it has manufactured.

(d) The use by a contractor building or improving a publicly owned road of crushed rock or pit run gravel ~~((which))~~ that it has extracted.

(3) **Business and occupation tax.** Persons manufacturing or extracting tangible personal property for commercial or industrial use are subject to tax under the manufacturing or extracting B&O tax classifications, as the case may be. The tax is measured by the value of the product manufactured or extracted and used. See WAC 458-20-112 Value of products, for additional information.

(4) **Use tax.** Persons manufacturing or extracting tangible personal property for commercial or industrial use are subject to use tax on the value of the article used, unless a specific exemption is provided. See WAC 458-20-178 Use tax and the use of tangible personal property, for further explanation of use tax and the definition of "value of the article used."

(5) **Exemptions.** The following uses of articles produced for commercial or industrial use are expressly exempt from use tax.

(a) RCW 82.12.0263 exempts from the use tax the use of biomass fuel by the same person that extracted or manufactured that biomass fuel when it is used directly in the operation of the particular extractive operation or manufacturing plant ~~((which))~~ that produced or manufactured the same biomass fuel.

(b) Property produced for use in manufacturing ferrosilicon, which is subsequently used to make magnesium for sale, is exempt from use tax if the primary purpose is to create a chemical reaction directly through contact with an ingredient of ferrosilicon. RCW 82.04.190(1).

(c) Hog fuel used to produce electricity, steam, heat, or biofuel is exempt from use tax. RCW 82.12.956. For the purposes of this exemption, "hog fuel" means wood waste and other wood residuals including forest derived biomass, but not including firewood or wood pellets. "Biofuel" means a liquid or gaseous fuel derived from organic matter intended for use as a transportation fuel including, but not limited to, biodiesel, renewable diesel, ethanol, renewable natural gas, and renewable propane.

(6) **Special provisions regarding value of article used.** RCW 82.12.010 provides the following special valuation provisions to persons manufacturing products for commercial or industrial use:

(a) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the United States Department of Defense, the value of the articles used is determined according to the value of the ingredients of those articles.

(b) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used is determined by:

(i) The retail selling price of such new or improved product when first offered for sale; or

(ii) The value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(c) In the case of a person manufacturing or extracting asphalt or aggregates used in providing services taxable under RCW 82.04.280 (1)(b), the value of the asphalt or aggregates used is based on cost. Specifically, the value of the asphalt or aggregates equals the sum of all direct and indirect costs attributable to the asphalt or aggregates used, plus a public road construction market adjustment of five percent of those costs.

OTS-5090.1

AMENDATORY SECTION (Amending WSR 23-14-002, filed 6/21/23, effective 7/22/23)

WAC 458-20-178 Use tax and the use of tangible personal property. (1) **Introduction.** This rule provides general use tax-reporting information for consumers. It discusses who is responsible for remitting use tax, and when and how to remit the tax. The rule also explains the imposition of use tax as it applies to the use of tangible personal property within this state when the acquisition of the tangible personal property was not subject to retail sales or deferred sales tax.

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

(b) **Additional information available.** For information on use tax exemptions please refer to chapter 82.12 RCW. When appropriate, this rule refers the reader to applicable statutes and rules. In addition, the reader may wish to refer to the following:

~~(i) WAC ((458-20-145, Local sales and use tax, provides information on sourcing local sales and use taxes.~~

~~(ii)) 458-20-112, Value of products, provides information on the measure of tax for certain sales.~~

(ii) WAC 458-20-145, Local sales and use tax, provides information on sourcing local sales and use taxes.

(iii) WAC 458-20-15503, Digital products, provides information on sales and use tax liability on digital products such as: Digital goods, including digital audio works, digital audio-visual works, and digital books; digital automated services; digital codes used to obtain digital goods or digital automated services; and remote-access software.

~~((iii)) (iv) WAC 458-20-169, Nonprofit organizations, provides information on a use tax exemption for donated items to a nonprofit charitable organization.~~

~~((iv)) (v) WAC 458-20-17803, Use tax on promotional material, provides information about the use tax reporting responsibilities of persons who distribute or cause the distribution of promotional material, except newspapers, the primary purpose of which is to promote the sale of products or services in Washington.~~

~~((v)) (vi) WAC 458-20-190, Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments, provides tax reporting information for businesses doing business with the United States.~~

~~((vi)) (vii) WAC 458-20-192, Indians—Indian country, provides information on use tax pertaining to Indians and Indian tribes and use tax pertaining to non-Indians in Indian country.~~

~~((vii)) (viii) WAC 458-20-257, Warranties and service contracts, provides information on tax responsibilities of persons selling or performing services covered by warranties, service contracts, and mixed agreements for tangible personal property.~~

(2) **What is use tax?** Use tax complements the retail sales tax, and in most cases mirrors the retail sales tax. Articles of tangible personal property used or certain services purchased in Washington are subject to use tax when the state's retail sales tax has not been paid, or where an exemption is not available. Tangible personal property or services used or purchased by the user in any manner are taxable including, but not limited to:

- Purchases directly from out-of-state sellers;
- Purchases through the internet, telemarketing, mail order; or
- Acquisitions at casual or isolated sales.

(a) **Example 1.** ABC Company (ABC) orders office supplies from out-of-state vendors and also through catalogs. In addition, ABC pays annual subscriptions for magazines for their own use. None of these vendors is required to collect Washington's retail sales tax. Use tax is due on all taxable items ordered including the annual subscriptions.

(b) **Example 2.** Mary is a music instructor that teaches adults how to play the piano. Mary does not charge her students retail sales tax on the costs of the weekly piano lessons. Use tax is not due on the lessons, as the lessons are not a retail sales taxable service. See WAC 458-20-224, Service and other business activities.

(3) **"Use" defined.** For purposes of this rule, "use," "used," "using," or "put to use" have their ordinary meaning and include the first act by which a person takes or assumes dominion or control over the article (as a consumer). It includes installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual

use or consumption within the state. (See RCW 82.12.010.) Multiple uses of the same article by the same person do not generally result in multiple use tax liabilities.

(4) **Measure of tax - Value of article used.** Use tax generally is levied and collected on an amount equal to the value of the article used by the taxpayer. RCW 82.12.010 defines this value to generally be the purchase price of the article. There are a number of specific situations where this value may be different than the amount of consideration paid or given by the buyer to the seller. See subsection (7) of this rule for exceptions.

(a) **When the value is the purchase price.** The term "purchase price" has the same meaning as "selling price." The selling price is the total amount of consideration, except trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise. The selling price, and therefore the "value of the article used" also includes delivery charges. Delivery charges are charges made by the seller for preparing and delivering tangible personal property to a location designated by the buyer and include, but is not limited to, charges for transportation, shipping, postage, handling, crating, and packing. (See RCW 82.08.010 and 82.12.010.)

(b) **When the purchase price does not represent true value.** When an article is sold under conditions in which the purchase price does not represent the true value, the "value of the article used" is to be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character. (See RCW 82.12.010.) This is frequently referred to as the fair market value of the property. For additional information regarding the measure of tax for articles in these situations, refer to WAC 458-20-112, Value of products. Refer to subsection (4)(i)(i) of this rule for determining use tax when there is no similar article of like quality and character.

A comparison(≠) and examination of arm's length sales transactions is required when determining the value of the article used on the basis of the retail selling price of similar products. An arm's length sale generally involves a transaction negotiated by unrelated parties, each acting in his or her own self-interest.

(i) In an arm's length sales transaction, the value placed on the property by the parties to the transaction may be persuasive evidence of the true value of the property. Where there is a conflict regarding the true value of tangible personal property between sales documents, entries in the accounting records (~~and~~), or value reported for use tax purposes, the department often looks to the person's accounting records as an indication of the minimum value of capitalized property. Neither the department nor the taxpayer is necessarily bound by this value if it is established that the entry in the books of account does not fairly represent the true value of the article used.

(ii) Some arm's length sales transactions involve multiple pieces of property or different types of property (such as when both real and personal property are sold). While the total sales price may represent a true value for the property in total, the values allocated to the specific components may not in and of themselves represent true values for those components. This is especially apparent when the values assigned by the parties to the sales transaction vary from those entered into the accounting records (~~and~~) or reported for use tax purposes. In such cases, the value of the article used for the purpose of the

use tax must be determined as nearly as possible according to the retail selling price, at the place of use, of similar products of like quality and character.

(c) **Property acquired and used outside Washington before use occurs in Washington.** The purchase price of property acquired and used outside Washington before being used in this state may not represent the property's true value. Under these circumstances, the value of article used is the retail selling price at place of use of similar products of like quality and character as of the time the article is first used in Washington.

(d) **Imported property.** When property is imported from outside the United States for use in Washington state, the value of the article used includes any amount of tariff or duty paid with respect to importation.

(e) **Articles produced for commercial or industrial use.** A person who extracts or manufactures products or by-products for commercial or industrial use is subject to use tax and the business and occupation (B&O) tax on the value of products or by-products used. "Commercial or industrial use" is the use of products, including by-products, as a consumer by the person who extracted or manufactured the products or by-products. See WAC 458-20-134, Commercial or industrial use and WAC 458-20-136, Manufacturing, processing for hire, fabricating.

Tax applies even if the person is not generally in the business of extracting, producing, or manufacturing the products, or the extracting or manufacturing activity is incidental to the person's primary business activity. Thus, a clothing retailer who manufactures signs or other materials for display purposes incurs a liability even though the clothing retailer is not otherwise in the business of manufacturing signs and other display materials for sale.

(i) The extractor or manufacturer is responsible for remitting retail sales or use tax on all materials used while developing or producing an article for commercial or industrial use. This includes materials that are not components of the completed article.

(ii) The value of the extracted or manufactured article is subject to use tax when the article is completed and used. The measure of use tax due for the completed article may be reduced by the value of any materials actually incorporated into that article if the manufacturer or extractor previously paid sales or use tax on the materials. See subsection (4)(g) of this rule for an explanation of the measure of tax for a completed prototype.

(f) **Bailment.** For property acquired by bailment, the "value of the article used" for the bailee is an amount representing a reasonable rental for the use of the bailed article, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character. (See RCW 82.12.010.) If the nature of the article is such that it can only be used once, the reasonable rental value is the full value of the article used. See also WAC 458-20-211, Leases or rentals of tangible personal property, bailments.

(g) **Prototypes.** The value of the article used with respect to an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product is:

- The retail selling price of such new or improved product when first offered for sale; or
- The value of materials incorporated into the prototype in cases where the new or improved product is not offered for sale. (See RCW 82.12.010.)

(h) **Articles manufactured and used in the production of products for the department of defense.** When articles are manufactured and used in the production of products for the department of defense, use tax is due except where there is an exemption. The value of the article used with respect to an article manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States is the value of the ingredients of the manufactured or produced article. (See RCW 82.12.010.) However, refer to WAC 458-20-13601, Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment, to determine if such articles qualify for exemption under RCW 82.12.02565.

(i) **Property temporarily brought into Washington for business use.** In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than 180 days in any period of 365 consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used must be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under chapter 82.08 or 82.12 RCW upon the full value of the article used.

However, this measure of "value of article used" is a separate provision from RCW 82.12.0251 use tax exemption. The use tax exemption is provided to nonresidents bringing property into Washington for his or her use or enjoyment while temporarily within the state, unless the property is used in conducting a nontransitory business activity. The term "nontransitory business activity," for the purposes of this exemption, means and includes the business of extracting, manufacturing, selling tangible and intangible property, printing, publishing, and performing contracts for (~~the~~) constructing or improving (~~of~~) real or personal property. It does not include the business of conducting a circus or other form of amusement when the personnel and property of such business regularly moves from one state into another, nor does it include casual or incidental business done by a nonresident lawyer, doctor or accountant.

(i) **Reasonable rental value.** A reasonable rental value is normally determined by the rental price or using the fair market rental value of similar products of like quality and character if rental price is not reasonable. If a reasonable rental value cannot be determined because of the nature of property, such as it may not be possible to find similar products of like quality and character, monthly reasonable rental value may be determined based on depreciation plus one percent (per month) of the purchase price. For the purpose of this computation, depreciation should be computed on a straight-line basis with an assumption that there is no salvage value. The life of the asset must be based on "book" life rather than an accelerated life that might be used for federal tax purposes. This calculation applies even if the asset is fully depreciated.

(ii) **Example.** A piece of equipment that originally cost \$100,000 and has a book life of 48 months results in a monthly rental value of \$3,083 ($(100,000/48) + (100,000 \times .01)$). This monthly value applies even if the asset is fully depreciated or is greater or less than the actual depreciation used for federal tax purposes. A lesser value can be used if the taxpayer retains documentation supporting the lesser value and that value is based on rental values.

(j) **Special provisions for vessel dealers and manufacturers.** The value of an article used for a vessel held in inventory and used by a

vessel dealer or vessel manufacturer for personal use is the reasonable rental value of the vessel used. This value applies only if the vessel dealer or manufacturer can show that the vessel is truly held for sale and that the dealer or manufacturer is and has been making good faith efforts to sell the vessel. (See RCW 82.12.802.) This may result in a vessel manufacturer incurring multiple use tax liabilities with respect to multiple uses of the same vessel.

The use of a vessel by a vessel dealer or vessel manufacturer for certain purposes is not subject to use tax. For specific information on these exemptions see RCW 82.12.800 and 82.12.801.

(k) **Special provision for asphalt and aggregate.** In the case of a person manufacturing or extracting asphalt or aggregates used in providing services taxable under RCW 82.04.280 (1)(b), the value of the asphalt or aggregates used is based on cost. Specifically, the value of the asphalt or aggregates equals the sum of all direct and indirect costs attributable to the asphalt or aggregates used, plus a public road construction market adjustment of five percent of those costs.

(5) **Who is liable for the tax?** RCW 82.12.020 imposes use tax upon every person using tangible personal property or certain retail services as a consumer in the state of Washington. The law does not distinguish between persons using property (or certain retail services) for business or personal use. Thus, a Washington resident purchasing personal items via the internet or through a mail-order catalog has the same legal responsibility to report and remit use tax as does a corporation purchasing office supplies. The rate of the use tax is the same as the retail sales tax rate in the location where the property is used. Refer to WAC 458-20-145, Local sales and use tax, for further discussion about determining where use occurs.

(a) **When tax liability arises.** Use tax is owed at the time the tangible personal property is first put to use in this state, unless an exemption is available.

(b) **Reporting and remitting payment to the department of revenue.**

(i) **Registered taxpayers.** Persons registered with the department under RCW 82.32.030 to do business in Washington should use their excise tax return to report and remit use tax.

(ii) **Unregistered persons.** Persons not required to be registered with the department should use a Consumer Use Tax Return to report and remit use tax. The Consumer Use Tax Return is available by:

(A) Using the department's website at dor.wa.gov;

(B) Calling the department's telephone information center at 360-705-6705; or

(C) Requesting the form at any of the department's local field offices.

The completed Consumer Use Tax Return, with payment, is due on or before the 25th day of the month following the month in which the tax liability occurs. For example, a person acquires clothing without payment of the retail sales tax during August. The Consumer Use Tax Return and the tax are due by September 25th.

The return and payment can be submitted electronically using the department's online system at dor.wa.gov, mailed, or delivered to any of the department's local field offices.

(6) **How does use tax differ from the retail sales tax?** There are circumstances where the law does not provide a use tax exemption to complement a retail sales tax exemption. Where there is no complementary use tax exemption, the buyer(≠) or user is still responsible for remitting use tax on his or her use of the purchased property.

For instance, there is no complementary use tax exemption to the retail sales tax exemption in RCW 82.08.0251. This exemption provides a retail sales tax exemption for articles acquired in casual sales transactions, if the seller is not required to be registered with the department. Because there is no complementary use tax exemption, the buyer (~~/~~) or user is responsible for remitting the use tax on his or her use of the purchased property. For example, if a person purchases furniture through a classified ad from a homeowner, the buyer is responsible for reporting and paying the use tax although the sale is exempt from retail sales tax.

(7) **Exceptions.** The law provides certain exceptions to the imposition of tax on a single event. These exceptions occur when the law provides a method of determining the measure of tax different than the full value of the article being used.

(a) **Destroyed property.** The mere destruction or discarding of tangible personal property as unusable or worthless is usually not considered a taxable "use." The following examples identify a number of facts and then state a conclusion.

(i) **Example 4.** AA Computer Software (AA) has some obsolete inventory that will no longer sell as an updated version of the software is now available for purchase. AA decides to throw away this inventory even though it has never been used. As the software was never used, use tax is not owed on the destroyed inventory.

(ii) **Example 5.** WW Dealer purchases a used vehicle for resale. WW Dealer publicizes an upcoming sale by airing a television commercial in which WW Dealer destroys the vehicle. WW Dealer's destruction of the vehicle for publicity purposes is considered use by a consumer. The vehicle is subject to use tax sourced at the location where WW Dealer destroys the vehicle.

(b) **Tangible personal property acquired by gift or donation.** (~~(The use of)~~) Using property acquired by gift or donation is subject to the use tax, unless the person (~~(gifting)~~) giving or donating the property previously paid or remitted Washington retail sales or use tax on the purchase or use of the property. (See RCW 82.12.020.) However, a credit for tax paid in another jurisdiction is available if documentation of tax paid is provided. See subsection (8) of this rule for additional information.

Use tax does not apply when the same property is (~~(gifted)~~) given or donated back to the original (~~(gifter)~~) giver or donor if the original (~~(gifter)~~) giver or donor previously paid the retail sales tax or use tax.

Example 6. John purchases a vehicle, pays retail sales tax on the purchase, and (~~(gifts)~~) gives the vehicle to Mary. Mary's use of the vehicle is not subject to use tax because John paid sales tax when he purchased the vehicle. After two years, Mary returns the vehicle to John. John's use of the vehicle is not subject to use tax because he paid sales tax when he originally purchased the vehicle. However, use tax is due if Mary (~~(gifts)~~) gives or donates the vehicle to a person other than John because Mary has not previously paid retail sales or use tax.

(c) **Tangible personal property put to both an exempt and taxable use.** If property is first used for an exempt or nontaxable purpose and is later used for a nonexempt or taxable purpose, use tax is due on the value of the property when first used for the nonexempt or taxable purpose. For instance, RCW 82.12.0251 provides a use tax exemption for the temporary use within Washington of watercraft brought in by certain nonresidents. (See WAC 458-20-238, Sales of watercraft to nonres-

idents—Use of watercraft in Washington by nonresidents, for a detailed explanation of the exemption requirements.) However, use tax is due if the nonresident exceeds the temporary use threshold or the nonresident subsequently becomes a Washington resident.

(d) **Intervening use of property purchased for resale.** Persons purchasing tangible personal property for resale in the regular course of business may purchase the property at wholesale without paying retail sales tax provided the property is not put to intervening use, and the buyer provides the seller with a completed reseller permit. (See RCW 82.04.050 and 82.04.060.)

A buyer who purchases taxable property at wholesale and subsequently puts the property to intervening use is subject to either the retail sales tax (commonly referred to as "deferred retail sales tax") or use tax, unless a specific use tax exemption applies to the intervening use. The tax applies even if the property is at all times held out for sale and is in fact later sold. Tax is due even if the intervening use is the result of an unforeseen circumstance, such as when property is purchased for resale, the customer fails to satisfy the terms of the sales agreement, and the property is used until another customer is found. See WAC 458-20-102 Reseller permits regarding tax-reporting requirements when a person purchases property for both resale and consumption.

(e) **Using inventory to promote sales.** Intervening use does not include the use of inventory for floor or window display purposes if that merchandise is subsequently sold as new merchandise. Likewise, intervening use does not include the use of inventory for demonstration purposes occurring with efforts to sell the same merchandise if that merchandise is subsequently sold as new merchandise. The fact that the selling price may be discounted because the property is shop worn from display or demonstration is not, by itself, controlling for the purposes of determining whether intervening use has occurred.

Evidence that property has been put to intervening use includes, but is not limited to, the following:

(i) **Property not sold as new merchandise.** Intervening use occurs if, after use of the property for display or demonstration purposes, the property can no longer be sold as new merchandise. An indication that intervening use has occurred is if property is without a new model warranty if the sale of the property normally includes such a warranty.

(ii) **Capitalizing demonstrator or display property.** The capitalization and depreciation of property is evidence of intervening use. Thus, there is a rebuttable presumption that intervening use occurs if the accounting records identify the property as a demonstrator or as display merchandise. The burden is on the person making such entries in the accounting records to substantiate any claims the property was not put to intervening use.

(iii) **Loaning property to promote sales.** Intervening use includes loaning property to a customer or potential customer for the purpose of promoting sales of other products. For example, intervening use occurs if a coffee manufacturer (~~and~~) or distributor loans brewing equipment to a customer to promote coffee sales, even if the equipment is subsequently sold to the same or different customer. In this example, the coffee manufacturer (~~and~~) or distributor loaning the equipment would owe use tax on the full value of the equipment. If the manufacturer (~~and~~) or distributor had not paid use tax, the customer would owe use tax on the reasonable rental value as this is a bail-

ment situation. See subsection (4)(f) of this section for the measure of tax on bailed articles.

(f) **Effect of the trade-in exclusion.** The exclusion for the value of trade-in property from the measure of tax applies only if the trade-in property is of the same general type or classification as the property for which it was traded-in. There is no requirement that Washington's retail sales or use tax be previously paid on the trade-in property. There is also no requirement that the property subject to use tax be acquired in Washington, or that the user be a Washington resident at the time he or she acquired the property. For additional information refer to WAC 458-20-247, Trade-ins, selling price, sellers' tax measure.

(8) **Credit for taxes paid in other jurisdictions.** RCW 82.12.035 provides a credit against Washington's use tax for legally imposed retail sales or use taxes paid by the purchaser to: Any other state, possession, territory, or commonwealth of the United States, or any political subdivision of a state, the District of Columbia, or any foreign country or political subdivision of a foreign country. (See RCW 82.56.010.)

(a) This use tax credit is available only if the present user, or his or her bailor or donor, has documentation that shows the retail sales or use tax was paid with respect to such property, extended warranty, digital products, digital codes, or service defined as a retail sale in RCW 82.04.050 to the other taxing jurisdiction.

(b) This credit is not available for other types of taxes such as, but not limited to, value-added taxes (VATs).

(c) For the purposes of allocating state and local use taxes, the department first applies the credit against the amount of any use tax due the state. Any unused portion of the credit is then applied against the amount of any use tax due to local jurisdictions. RCW 82.56.010, Multistate Tax Compact, Article V. Elements of Sales and Use Tax Laws.

(9) **No apportionment of use tax liability.** Unless specifically provided by law, the value of the article or use tax liability may not be apportioned even though the user may use the property both within and without Washington, or use the property for both taxable and exempt purposes.

(a) **Example 7.** A construction company using an airplane for traveling to and from its Washington office and out-of-state job sites must remit use tax on the full value of the airplane, even if the airplane was purchased and delivery taken outside Washington. There is no apportionment of this value even though the airplane is used both within and outside of Washington.

(b) **Exemption.** For an exemption pertaining to use tax liability, see WAC 458-20-17401, Use tax liability for motor vehicles, trailers, and parts used by motor carriers operating in interstate or foreign commerce.