

WAC 458-20-272 Tire fee—Studded tire fee—Core deposits or credits. (1) **Introduction.** This rule describes the tire fee imposed under RCW 70.95.510 and the studded tire fee imposed under RCW 46.37.427 for collection beginning July 1, 2016. See chapter 44, Laws of 2015 (2ESSB 5987). This rule also describes how business and occupation (B&O), sales, and use taxes apply to tire fees, battery core charges and core deposits or credits, including the exemptions described in RCW 82.08.036 and 82.12.038.

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

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

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

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

(2) **Tire fee.**

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

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

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

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

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

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

(g) **What tires are subject to the tire fee?** All new replacement vehicle tires are subject to the tire fee. Refer to RCW 70.95.030 for the definition of "vehicle."

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

(A) Automobiles;

(B) Trucks;

(C) Recreational vehicles;

- (D) Trailers;
- (E) All-terrain vehicles (ATVs);
- (F) Agricultural vehicles, such as tractors or combines;
- (G) Industrial vehicles, such as forklifts;
- (H) Construction vehicles, such as loaders or graders; and
- (I) Golf carts.

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

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

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

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

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

(3) Studded tire fee.

(a) **What is the studded tire fee?** The studded tire fee is a five dollar fee imposed on the retail sale of each new tire sold, on or after July 1, 2016, that contains studs. The seller will collect the fee from the buyer. For the purpose of this subsection, "new tire sold that contains studs" means a tire that is manufactured for vehicle purposes and contains metal studs, and does not include bicycle tires or retreaded vehicle tires.

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

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

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

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

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

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

(h) **Does the studded tire fee apply to tires sold to the federal government or Indians and Indian tribes?** With respect to these sales, the studded tire fee is handled the same as the tire fee described in subsection (2)(i) of this rule.

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

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

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

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

(ii) **Battery core charge.** "Battery core charge" refers to a core deposit, not less than five dollars, that a seller by law must retain when a retail purchaser has no used battery to exchange or trade in. A buyer may return within thirty days of the purchase with a used battery of equivalent size and claim the core charge amount. See RCW 70.95.630 and 70.95.640.

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

(c) **Examples.**

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

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

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-07-047, § 458-20-272, filed 3/14/16, effective 4/14/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), 70.95.630, and 70.95.640. WSR 09-19-136, §

458-20-272, filed 9/22/09, effective 10/23/09. Statutory Authority:
RCW 82.32.330, 82.01.060(2), and 34.05.230. WSR 06-12-017, §
458-20-272, filed 5/26/06, effective 6/26/06.]