

WAC 458-20-17401 Use tax liability for motor vehicles, trailers, and parts used by motor carriers operating in interstate or foreign commerce. (1) **Introduction.** This rule explains the use tax and available use tax exemptions provided by RCW 82.12.0254 that apply to for hire motor carriers operating in interstate or foreign commerce. See subsection (3) of this rule for information on the requirement of substantial use in the normal course of the carrier's business as a for hire carrier.

(a) **Readers may want to refer to WAC 458-20-174.** For hire motor carriers should refer to WAC 458-20-174 for a discussion of the retail sales tax and retail sales tax exemptions that apply to motor carriers for the purchase of vehicles, trailers, and parts under RCW 82.08.0262 and 82.08.0263.

(b) **Definitions.** Definitions in WAC 458-20-174 apply to this rule.

(c) **Examples.** This rule contains examples that identify a number of facts and then state a conclusion. The 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) **Use tax.** The use tax complements the retail sales tax by imposing a tax of like amount on the use within this state as a consumer of any tangible personal property purchased at retail, where the user has not paid retail sales tax with respect to the purchase of the property used. For additional information on use tax refer to WAC 458-20-178. If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred retail sales or use tax directly to the department of revenue (department) unless the purchase and/or use is exempt from the retail sales and/or use tax. Use tax is determined by the fair market value of the property when first subject to the use tax. See subsection (5) of this rule.

(3) **Motor vehicles and trailers.** Purchasers of motor vehicles and trailers should note the differences in the conditions and requirements for the retail sales and use tax exemptions provided by RCW 82.08.0263 and 82.12.0254, respectively. The purchaser of a motor vehicle or trailer may qualify for the retail sales tax exemption at the time of purchase, yet incur a use tax liability for the subsequent use of the same vehicle or trailer.

(a) For vehicles purchased in Washington, RCW 82.12.0254 provides a use tax exemption for the use of any motor vehicle or trailer while being operated under the authority of a trip permit and moving from the point of delivery in this state to a point outside this state.

(b) RCW 82.12.0254 also provides a use tax exemption for the use of any motor vehicle or trailer owned by, or operated under contract with, a for hire motor carrier engaged in the business of transporting persons or property in interstate or foreign commerce if both of the following conditions are met:

(i) The user is, or operates under contract with, a holder of a carrier permit issued by the Interstate Commerce Commission (ICC) or its successor agency; and

(ii) The vehicle is used in substantial part in the normal and ordinary course of the user's business for transporting persons or property for hire across the boundaries of the state.

"In substantial part" means that the motor vehicle or trailer for which exemption is claimed actually crosses Washington boundaries and is used a minimum of twenty-five percent in interstate for hire hauling.

(c) **Retaining the exemption.** The motor carrier must continue to substantially use the motor vehicle or trailer in interstate for hire hauls during each calendar year to retain the exemption from use tax. This requires that at the start of each calendar year the carrier review the usage of each vehicle and trailer for a "view period" consisting of the previous calendar year. If a particular vehicle was purchased or sold during the year so that the vehicle was not available for use during the entire calendar year, the taxpayer at its option may elect to review the usage during the portion of the year during which the vehicle was owned or may use the twelve-month period beginning with the date of purchase of a vehicle or ending with the date of sale of a vehicle. For example, if a vehicle is traded-in on May 30, 2013, the taxpayer must meet the substantial use test for this vehicle for either the period January through May 2013 or for the period June 1, 2012, through May 30, 2013. Use tax is due for those vehicles which have not been used substantially in interstate commerce and on which retail sales or use tax has not been paid.

(d) **Maintaining records on a fiscal year basis.** Carriers who maintain their records on a fiscal year basis may, at their option, elect to review the usage of their vehicles using their fiscal year rather than the calendar year. If a fiscal year is used, it must be used for the entire fleet of vehicles, except for view periods based on the acquisition or disposal of vehicles. These carriers may not change to a calendar year basis without first obtaining prior approval from the department.

(e) **Calendar or fiscal year basis only.** Usage will be reviewed on a calendar or fiscal year basis and not on a "moving" twelve-month period. For example, a tractor purchased on August 1, 2012, will need to have met the substantial use test for the period August through December 2012, or for the period August 1, 2012, through July 31, 2013, the period selected being at the taxpayer's option, and for the calendar year 2013 and each calendar year thereafter to retain the use tax exemption.

(f) **Methods for determining if motor vehicles and trailers qualify.** The motor carrier may select one of the methods from those listed below to determine if its motor vehicles and trailers satisfy the substantial use threshold for exemption under RCW 82.12.0254. The particular method must be applied to all trucks, tractors, and trailers within the fleet. Regardless of the method selected, a vehicle will not be considered as used in interstate hauls unless the vehicle actually crosses the boundaries of the state and is used in part outside Washington. The motor carrier may change the method with the prior written consent of the department. The methods are:

(i) **Line crossing.** The line crossing method compares the number of interstate for hire hauls made by a particular motor vehicle or trailer to the total number of for hire hauls. It makes no difference whether the for hire hauls are partial or full loads. The motor vehicle or trailer must actually cross the boundaries of this state or be used for hauls which begin and end outside this state, for the haul to be considered an interstate haul.

(ii) **Mileage.** The mileage method compares the interstate mileage associated with the for hire hauls made by a particular motor vehicle or trailer, to the total mileage associated with its for hire hauls. All mileage associated with a specific haul that requires the motor vehicle or trailer to actually cross the boundaries of this state, or haul exclusively outside this state, is considered to be interstate mileage. Where a vehicle is returning empty after having delivered an

interstate load or is empty on its way to pickup an interstate load, the empty mileage will be considered to be part of the mileage from an interstate haul.

(iii) **Revenue.** The revenue method compares the interstate for hire revenue generated by the particular motor vehicle or trailer to the total for hire revenue generated. The revenue generated by the motor vehicle or trailer actually crossing the boundaries of this state, or hauling exclusively outside this state, is considered to be interstate revenue for the purposes of determining use tax liability. If the motor carrier uses more than one motor vehicle or trailer to transport the cargo, the revenue generated from hauling this cargo must be allocated between the motor vehicles and/or trailers used. For the purposes of determining use tax liability, a vehicle will not be considered as having interstate revenue even if the haul originates or ends outside Washington unless the vehicle actually crosses the boundaries of the state.

(iv) **Other.** Any other method may be used only when approved in advance and in writing by the department.

(g) **Examples.**

(i) Example 1. ARC Trucking picks up a load of cargo in Spokane, Washington and delivers it to the dock in Seattle, Washington, for subsequent shipment to Japan. While ARC may claim an interstate and foreign sales deduction on its excise tax return for the income attributable to this haul if all of the requirements of RCW 82.16.050(8) are met, the haul itself is considered to be intrastate for the purposes of determining whether the tractor and trailer (tractor-trailer) rig meets the substantial use threshold discussed in RCW 82.12.0254. Both the pickup and delivery points are within the state of Washington.

(ii) Example 2. DMG Express picks up a load of cargo in Yakima, Washington for ultimate delivery in Billings, Montana. The cargo is initially hauled from the Yakima location to DMG's hub terminal in Spokane, Washington by truck A. It is unloaded from truck A at the hub terminal, reloaded on truck B, and delivered to Billings. For the purposes of determining qualification for the use tax exemption provided by RCW 82.12.0254, two hauls have taken place. The haul performed by truck A is considered to be intrastate because truck A did not cross the borders of Washington, while the haul performed by truck B is considered interstate for purposes of determining continued exemption from use tax on the trucks, even though the entire hauling income may be deductible from the motor transportation tax.

(iii) Example 3. AA Express operates one tractor-trailer rig, which has previously met the retail sales and use tax exemption requirements. AA verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the line crossing method. AA makes one hundred for hire hauls within the calendar year. Of these hauls, seventy-one are entirely in Washington, ten are performed entirely outside Washington, and nineteen require AA to cross the borders of Washington. AA Express has not incurred a use tax liability on the tractor-trailer rig as twenty-nine percent of the for hire hauls were interstate in nature.

(iv) Example 4. BDC Hauling operates one tractor-trailer rig that has previously met the retail sales and use tax exemption requirements. BDC verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the mileage method. BDC makes one hundred for hire hauls within the calendar year, for a total of one hundred thousand miles. Included in this mileage figure

are the unladen or "empty" miles BDC incurs from delivery points to its terminal. Fifteen of these hauls were interstate in nature and involved laden travel of twenty thousand miles, including the Washington miles of the interstate hauls where the rig made border crossings. BDC's tractor-trailer rig also incurred an additional eight thousand miles as a result of having to drive unladen from the delivery point of an interstate haul to its Washington terminal. BDC Hauling has not incurred a use tax liability for its use of the tractor-trailer rig as twenty-eight percent of the tractor-trailer's usage was in interstate hauling.

(v) Example 5. GV Trucking operates one tractor-trailer rig that has previously met the retail sales and use tax exemption requirements. GV verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the revenue method. GV makes one hundred for hire hauls within the calendar year, for which GV earns eighty thousand dollars. Fifteen of these hauls were interstate in nature, for which GV earned twenty thousand dollars. GV Trucking has not incurred a use tax liability for its use of the tractor-trailer rig as twenty-five percent of GV's usage of the tractor-trailer rig was in interstate hauling.

(vi) Example 6. XYZ Trucking operates a single tractor-trailer rig that has previously met the retail sales and use tax exemption requirements. XYZ picks up two loads of cargo in Seattle, one load for delivery to Kent, Washington, and another for delivery to Portland, Oregon. At delivery of the cargo to Kent, XYZ picks up another load for delivery to Portland, Oregon. XYZ has performed three separate hauls, even if the loads are combined on the same tractor-trailer rig. The Seattle to Portland and Kent to Portland hauls are considered interstate hauls, and the Seattle to Kent haul is intrastate. Under the mileage method, the mileage associated with the Seattle to Portland and Kent to Portland hauls would be added together to determine total interstate miles, even though the tractor-trailer rig made only one trip to Portland. Under the revenue method, the revenue generated by the Seattle to Portland and Kent to Portland hauls would be considered interstate. The revenue associated with the Seattle to Kent haul would be considered intrastate.

(4) **Special application to trailers.** Motor carriers must keep appropriate records and determine qualification for the use tax exemption provided by RCW 82.12.0254 for each individual truck and tractor. Motor carriers are encouraged to keep similar records for each individual trailer. Where records are maintained to document the use of individual trailers, it is encouraged that use tax liability for trailers be determined on the basis of those records. However, it is recognized that some motor carriers do not have an adequate system of tracking or documenting the travel of their trailers and it would be an undue burden to require such recordkeeping, particularly where a tractor may be used to pull multiple trailers and the trailers are not assigned to a specific tractor. Motor carriers may elect to determine the use tax liability attributable to their use of trailers on the basis of their actual use of the tractors. Whether the motor carrier uses their records or the ratio of fleetwide trailers to tractors that method must be applied to all trailers within the fleet. The motor carrier may change the method with prior written consent of the department.

(a) Under the trailer to tractor ratio method, it is assumed that there is a direct correlation between the use of tractors and the use of trailers. Whenever use tax is incurred on a tractor because of the

failure to maintain the twenty-five percent interstate usage, use tax will also be due on one or more trailers. The number of trailers subject to the use tax under this method shall correspond to the fleet-wide trailer to tractor ratio. Any trailer to tractor ratio resulting in a fraction shall be rounded up when determining the number of trailers subject to the use tax. For example, if the fleetwide ratio of trailers to tractors is two and one quarter to one, and one tractor fails to maintain the substantial use threshold in a given year, the motor carrier shall incur a use tax liability on three trailers. If two tractors fail to maintain the substantial use threshold in a given year, the motor carrier shall incur a use tax liability on five trailers.

(b) The trailer or trailers subject to use tax under this method shall be those acquired nearest to the purchase date of the tractor triggering the use tax liability for those trailers meeting the following conditions:

(i) The trailer or trailers are compatible for towing with the tractor upon which use tax is incurred; and

(ii) The trailer or trailers have not previously incurred a retail sales or use tax liability; and

(iii) The trailer or trailers have been actively used in hauling for hire in the year tax liability is incurred.

(c) Under this method of reporting, use tax liability is generally incurred on one or more trailers whenever a tractor is subject to the use tax. If a tractor is purchased with the intent that less than twenty-five percent of the hauls will be across state borders, it will be presumed the tractor will also be pulling a trailer or trailers on which use tax is also due. For example, ABC Trucking has eight tractors and fifteen trailers in its fleet. The tractors and trailers met the exemption from retail sales tax and use tax at the time they were purchased, and it was determined during previous annual reviews that the tractors continued to be substantially used on interstate hauls. However, at the time of the annual review for the just-completed calendar year it was determined that one tractor was not used at least twenty-five percent in interstate hauls. Use tax is due on this tractor. Under this method, use tax is also due on two trailers. The two trailers on which use tax must be reported are the two purchased closest to the purchase date of the tractor.

(5) **Valuation.** The value of the motor vehicle or trailer subject to the use tax is its fair market value at the time of first use within the view period for which the exemption cannot be maintained. However, because the taxpayer will not know until the close of the period whether the usage met the exemption requirements, the use tax is due and should be reported on the last excise tax return for that view period. For example, a motor carrier who has previously met the exemption requirements for a particular truck determines this truck no longer was substantially used in interstate hauls during calendar year 2013. Use tax should be reported on the last tax return filed for 2013 with the taxable value based on the value of the truck at January 1, 2013. If the motor carrier is using a fiscal year as the view period (see subsection (3)(e) of this rule), the use tax should be reported, based on the value of the truck on the first day of the view period, on the last tax return filed for the view period. The motor carrier must not change from calendar to fiscal year view periods without prior written consent of the department.

(a) **Determining valuation.** The department will accept independent publications containing values of comparable vehicles if those values

are generally accepted in the industry as accurately reflecting the value of used vehicles. The department will also consider notarized valuation opinions signed by qualified appraisers and/or dealers as evidence of the fair market value. In the absence of a readily available fair market value, the department will accept a value based on depreciation schedules in effect and used by the department of licensing to determine the value of vehicles for licensing purposes.

(b) **Examples.**

(i) Example 7. ABC Trucking purchased five trailers for use in both interstate and intrastate for hire hauls on January 1, 2012. All the necessary conditions for exemption under RCW 82.08.0263 were met; delivery was made in Washington, and the trailers were purchased without payment of the retail sales tax. The taxpayer uses the "line crossing" method for determining interstate use.

ABC Trucking keeps a journal showing the origin and destination for each haul that identifies each truck or tractor and trailer used on a per unit basis. This journal is reviewed at the end of each calendar year to verify compliance with the statutory provision that motor vehicles and trailers be substantially used for transporting persons or property for hire across the boundaries of the state. During the first year of use, all five of the trailers met the "substantial use" threshold. However, for the 2013 calendar year, ABC Trucking determines that two of the trailers failed to meet the twenty-five percent "substantial use" threshold. ABC Trucking must remit use tax directly to the department on its last excise tax return filed for 2013, based on the fair market values of the two trailers as of January 1, 2013. Because the taxpayer maintained specific usage records for each trailer, the "substantial use" in interstate hauling must be met by each trailer for which exemption is claimed. If detailed records for usage of trailers had not been kept, use tax liability of the trailers would have been based on the tractors. In any event, use tax liability may not be determined based on the overall experience of a fleet of vehicles. If a vehicle is used both in hauling for hire and in hauling the carrier's own products, the "substantial use" is determined solely on the usage in for hire hauling.

(ii) Example 8. DB Carriers is a motor carrier that is engaged in both intrastate and interstate for hire hauls. DB purchases and first uses a truck in Washington on January 1, 2012. All the necessary conditions for exemption under RCW 82.08.0263 were met; delivery was made in Washington, and the truck was purchased without payment of the retail sales tax. DB Carriers uses the "line crossing" method to determine interstate use.

DB Carriers keeps a journal showing the origin and destination for each haul that identifies each truck used on a per unit basis. This journal is reviewed at the end of the 2012 calendar year, and DB determines that the truck failed to meet the twenty-five percent "substantial use" threshold. DB Carriers must remit use tax directly to the department on its last excise tax return filed for 2012, based on the fair market value of the truck as of January 1, 2012. DB Carriers may not compute the use tax liability based on the December 31, 2012, fair market value as the vehicle never satisfied the substantial interstate use provision of RCW 82.12.0254.

(6) **Leased vehicles.** The use tax exemption requirements are the same for leased vehicles as for purchased vehicles. Motor vehicles and trailers, leased with or without operator are exempt from the use tax if the user is, or operates under contract with, a holder of a permit issued by the ICC or its successor agency and the vehicle is used in

substantial part in the normal and ordinary course of the user's business for transporting persons or property for hire across the boundaries of the state. This requires that the leased vehicle be used a minimum of twenty-five percent in interstate hauls. The taxpayer may elect to use either the fiscal year of the business or a calendar year to determine if the leased vehicle was used substantially in interstate hauls for hire. Where the vehicle lease does not begin or end at the start of the calendar year (or fiscal year if the business uses a fiscal year view period), the same requirements apply to leased vehicles as to purchased vehicles (see subsection (3)(c) of this rule).

(a) **Substantial use requirement not met.** If the leased vehicle or trailer does not meet the substantial use requirement during the "view period," the use tax applies to each lease payment within the "view period" where there was use in Washington. Use tax will be determined first for each "view period," then for each periodic lease period within the "view period." For example, if a truck was leased on a monthly basis for the years 2013 and 2014 and failed to meet the substantial use requirement in 2013, but met the requirement in 2014, use tax would only be due for the monthly payments for January and September of 2013 if those are the only two months during which usage in Washington occurred in 2013.

(b) **Examples.**

(i) Example 9. BG Hauling, a for hire carrier, enters into a lease agreement for a truck without operator on January 1, 2013. All the necessary conditions for the retail sales and use tax exemptions for the first year of the lease were met. BG Hauling verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis.

BG determines that this truck failed to meet the twenty-five percent substantial use threshold for calendar year 2014. Use tax will be due beginning with the period for which the exemption was not met, in this case beginning with January 2014. However, BG Hauling may report use tax only on each lease payment in which payment period there was actual in-state use, provided it maintains accurate records substantiating the truck's in-state and out-of-state activity. If BG Hauling continues to lease this truck in 2015, usage will again be reviewed for that period and use tax may or may not be due for the 2015 lease payments, depending on whether the vehicle was used substantially in interstate hauls during that year.

(ii) Example 10. MG Inc. is an equipment distributor which, in addition to hauling its own product to customers, is engaged in hauling for hire activities. MG is a holder of an ICC permit. MG enters into a lease agreement for a truck without operator on January 1, 2013. All conditions for retail sales and use tax exemption are satisfied for the first year of the lease.

Based upon the truck's for hire hauling activities during the 2014 calendar year, MG determines that the use of the truck failed to satisfy the twenty-five percent substantial use threshold. MG must remit use tax on the amount of lease payments made during 2014 at the time it files its last tax return for 2014. Provided accurate records are maintained to substantiate in-state and out-of-state use, MG may remit use tax on each lease payment in which the payment period there was actual in-state use. While only the hauling for hire activities are reviewed when determining whether the truck satisfies the substantial interstate use threshold, once it is established the exemption cannot be maintained, the use tax liability is based upon all in-state activity, including the motor carrier's hauling of its own product.

(7) **Component parts.** RCW 82.12.0254 also provides a use tax exemption for the use of tangible personal property that becomes a component part (including purchases of services related to that component part) of any motor vehicle or trailer used for transporting persons or property for hire. This exemption is available only for motor vehicles or trailers owned by, or operated under contract with, a person holding a carrier permit issued by the ICC or its successor agency authorizing transportation by motor vehicle across the boundaries of this state. Since carriers are required to obtain these permits only when the carrier is hauling for hire, the exemption applies only to tangible personal property purchased for vehicles that are used in hauling for hire. The exemption for component parts will apply even if the parts are for use on a motor vehicle or trailer that is used less than twenty-five percent in interstate hauls for hire, provided the vehicle is used in hauling for hire.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 15-15-028, § 458-20-17401, filed 7/7/15, effective 8/7/15. Statutory Authority: RCW 82.32.300. WSR 97-11-022, § 458-20-17401, filed 5/13/97, effective 6/13/97; WSR 94-18-004, § 458-20-17401, filed 8/24/94, effective 9/24/94.]