

WAC 458-20-154 Cemeteries, crematories, columbaria. (1) Introduction. This rule explains:

(a) The application of business and occupation (B&O), retail sales, and use taxes to the business activities of cemeteries;

(b) The application of B&O and retail sales taxes to amounts derived by cemeteries from prearrangement contracts (commonly referred to as "preneed" or "prepaid" arrangements) for the sale of interment rights, merchandise, and services.

For purposes of this rule, the term "cemeteries" includes cemeteries, burial parks, crematories, columbaria, and mausoleums. Refer to WAC 458-20-153 (Funeral establishments) for funeral establishment tax-reporting information.

The funeral and cemetery board regulates private cemeteries. Refer to Title 68 RCW and Title 98 WAC for information on the laws and administrative rules governing cemeteries.

(2) General tax reporting responsibilities.

(a) **Sales of interment services and interment rights.** The gross proceeds attributable to cemetery activities are taxable when the amounts are shown as income in the books and records or when services are performed or merchandise is delivered, whichever is earlier.

Amounts derived from interment services such as document recording, opening and closing the interment space, and placing grave liners or vaults in the interment space are subject to the service and other activities B&O tax. Sales or transfers of plots, crypts, and niches for the interment of human remains, irrespective of how the document of transfer is described (e.g., deed, certificate of ownership, or certificate of interment rights), are charges for the right of interment, an interest similar to a license to use real estate. Thus, the gross income from sales of interment rights is subject to B&O tax under the service and other activities classification.

(b) **Sales of merchandise, including installing, repairing, cleaning, altering, or improving property.** The gross proceeds from retail sales of tangible personal property such as monuments, markers, memorials, nameplates, outer burial containers (e.g., vaults or grave liners), boxes, urns, vases, benches, plants, shrubs, and flowers are subject to B&O tax under the retailing classification. Retailing B&O tax also applies to charges by cemeteries for installing, repairing, cleaning, altering, or improving tangible personal property of or for consumers. Cemeteries are also responsible for collecting and remitting to the department of revenue (the department) retail sales tax on retail sales of tangible personal property and charges for installing, repairing, cleaning, altering, or improving tangible personal property of or for consumers unless specifically exempt by law. Thus, charges for installing markers and monuments are subject to retailing B&O and retail sales taxes.

(c) **Sales to the federal government.** Sales of tangible personal property directly to the federal government are exempt from the retail sales tax, though the seller remains subject to B&O tax unless a specific exemption applies. Sales of tangible personal property to other persons, whether paid with federal funds or through a reimbursement arrangement, are fully subject to the retail sales tax. For additional information about the taxability of sales to the federal government, refer to WAC 458-20-190 (Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments).

(3) Cemeteries purchasing tangible personal property. Generally, retail sales tax is due when purchasing tangible personal property

such as tools and supplies used or consumed by cemeteries when providing interment services.

(a) **Items purchased for resale.** Tangible personal property purchased for resale without intervening use is not subject to retail sales tax. Property commonly purchased for resale by cemeteries includes, but is not limited to, monuments, markers, memorials, nameplates, liners, vaults, boxes, urns, vases, benches, plants, shrubs, and flowers. Cemeteries purchasing tangible personal property for resale must provide to the seller a reseller permit to document the wholesale nature of the sale as provided in WAC 458-20-102 (Reseller permits).

(b) **Deferred sales and use tax.** If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless specifically exempt by law. For detailed information about use tax, refer to WAC 458-20-178 (Use tax).

(4) **Prearrangement contracts.** Cemeteries often enter into prearrangement contracts with customers for the purchase of merchandise and services, unconstructed crypts or niches, or undeveloped graves to be furnished at a future date. Executed contracts are paid in either a lump sum or in installments. Unless otherwise exempt, the law requires cemeteries to place a percentage of all funds collected in payment of each prearrangement contract in a prearrangement trust account. As of the effective date of this section, the amount required in a prearrangement trust account is equal to the greater of (for merchandise) fifty percent of the contract price or the wholesale cost of the item, (for services) fifty percent of the contract price, or the direct cost of providing the service. Withdrawal of trust funds may only occur upon fulfillment or cancellation of the contract. See chapter 68.46 RCW.

(a) **When does tax liability arise?** Amounts placed into prearrangement trust accounts are subject to excise tax upon withdrawal from the prearrangement trust accounts. In other words, the amounts are taxable upon fulfillment or cancellation of the contract. Refer to subsection (2) of this section (General tax reporting responsibilities) for the tax treatment of amounts related to the fulfillment of the prearrangement contract.

(b) **Retail sales tax - Prearrangement trust accounts.** If retail sales tax paid by the buyer is placed into a prearrangement trust account, the retail sales tax is reported and remitted to the department upon fulfillment of the prearrangement contract.

If retail sales tax paid by the buyer is not placed into a prearrangement trust account, the tax must be reported on the excise tax return for the current reporting period and remitted to the department.

Upon cancellation of a prearrangement contract, a refund of retail sales tax remitted by a cemetery to the department is subject to the time limitations on refunds provided by RCW 82.32.060. For example, the law prohibits the department from refunding retail sales tax to a cemetery for a prearrangement contract that is canceled five years after the retail sales tax associated with the contract is remitted to the department. See also WAC 458-20-229 (Refunds).

(c) **Contract cancellation and trust administration fees.** Amounts retained by a cemetery from a canceled prearrangement contract are subject to service and other activities B&O tax, except that any amount allocable to a retail sale of merchandise is subject to retailing B&O and retail sales taxes. Administration fees deducted from a

prearrangement trust fund by the administrator are also subject to the B&O tax under the service and other activities classification.

(5) **Examples.** The following examples identify a number of facts and then state a general conclusion regarding the taxability of ceme-teries. The tax results of other situations must be determined after a review of all of the facts and circumstances. Use these examples only as a general guide.

(a) John and Jane Doe contracted with ABC Cemetery Association (ABC) for the interment of a deceased relative. The interment rights, merchandise, and services provided by ABC include an interment plot, an outer burial container, burial of the decedent, a marker, and in- stallation of the marker. In addition, ABC charges a document-record- ing fee.

(i) ABC is subject to service and other activities B&O tax on charges for the interment plot, burial of the decedent, and the docu- ment-recording fee.

(ii) The charges for the outer burial container, marker, and marker installation are subject to retailing B&O and retail sales tax- es.

(b) John and Jane Doe entered into a prearrangement contract with ABC for the purchase of interment rights, merchandise, and services provided upon their deaths. John and Jane made a down payment when signing the contract and agreed to pay the balance in sixty monthly installments. The interment rights, merchandise, and services pur- chased by John and Jane include interment plots, outer burial contain- ers, burial of their remains, markers, and installation of the mark- ers. The contract itemizes retail sales tax and provides for a finance charge on the unpaid balance.

ABC places all receipts under prearrangement contracts, including the finance charges, into a prearrangement trust account.

ABC must report:

(i) The amounts received for the interment plots under the serv- ice and other activities B&O tax classification at the time the income is recognized on the books and records or upon fulfillment of the con- tract, whichever is earlier;

(ii) The amounts received for the burial of remains, the docu- ment-recording fee, and the finance charges under the service and oth- er activities B&O tax classification at the time they perform the services; and

(iii) Retailing B&O and retail sales taxes on the sale of the outer burial containers, markers, and marker installation in the re- porting period during which they deliver the merchandise and perform the installation.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 15-21-089, § 458-20-154, filed 10/21/15, effective 11/21/15; WSR 78-06-083 (Order 78-3), § 458-20-154, filed 6/1/78; Order ET 70-3, § 458-20-154 (Rule 154), filed 5/29/70, effective 7/1/70.]