

WSR 22-04-027

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed January 24, 2022, 8:47 a.m., effective February 24, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 458-29A-600 to incorporate 2021 legislation, EHB [ESSB] 5251, section 17, and 2017 legislation, SSB 5977, section 1302, which is effective January 1, 2022.

Citation of Rules Affected by this Order: Amending WAC 458-29A-600 Leasehold excise tax—Collection and administration.

Statutory Authority for Adoption: RCW 82.29A.140.

Adopted under notice filed as WSR 21-23-056 on November 10, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 24, 2022.

Atif Aziz  
Rules Coordinator

OTS-3427.1

AMENDATORY SECTION (Amending WSR 14-14-034, filed 6/24/14, effective 7/25/14)

**WAC 458-29A-600 Leasehold excise tax—Collection and administration.** (1) **Introduction.** Leasehold excise tax is levied by the state under RCW 82.29A.030 and by counties and/or cities under RCW 82.29A.040. The administrative procedures contained in chapters 82.02 and 82.32 RCW apply to the administration and collection of the leasehold excise tax.

(2) **Tax imposed.** The rates at which leasehold excise tax is levied are contained in RCW 82.29A.030 and 82.29A.040. The department publishes documents containing the applicable rates, credits, and formulas. These documents are updated as necessary and are available upon request.

(3) **Separate listing requirement.** The amount of leasehold excise tax due must be listed separately from the amount of contract rent on any statement or other document provided to the lessee by the lessor. If the leasehold excise tax is not stated separately from the contract rent, it is assumed that the leasehold excise tax is not included in the amount stated as due.

(4) **Credits allowed against leasehold excise tax.** Because the leasehold excise tax is intended only to equalize treatment between private property owners and lessees of public entities, the amount of leasehold excise tax should not exceed the amount of property tax that would be due if the leased property was privately owned. Therefore, in calculating the taxes imposed under RCW 82.29A.030 and 82.29A.040, RCW 82.29A.120 authorizes the following credits:

(a) ~~((Leasehold interests created after April 1, 1986, or situations where the department has established taxable rent. Where a leasehold interest other than a product lease was created after April 1, 1986, or where the department has established taxable rent in accordance with RCW 82.29A.020 (2) (b), and the amount of leasehold excise tax due is greater than the amount of property tax that would be due if the property was privately owned by the lessee, without regard to any property tax exemption under RCW 84.36.381, a credit equal to the difference between the leasehold excise tax and the comparable property tax will be allowed. This credit expires at midnight, July 27, 2013.~~

~~If the property is subleased, any allowable credit must be passed on to the sublessee.))~~ **Property tax exemption under RCW 84.36.381.** Lessees and sublessees of residential property who would qualify for either a partial or total exemption from property tax under RCW 84.36.381 if they owned the property in fee are eligible for a corresponding reduction in the amount of leasehold excise tax due. The leasehold excise tax for the qualifying lessees or sublessees is reduced by the same percentage as the percentage reduction in property tax that would result from the property tax exemption under RCW 84.36.381.

(b) **Product leases.** A credit of ~~((thirty-three))~~ 33 percent of the total leasehold excise tax due is allowed for product leases.

(c) **Real property owned by a state university.** For a leasehold interest in real property owned by a state university, a credit is allowed equal to the amount of leasehold excise tax due under chapter 82.29A RCW that exceeds the amount of property tax that would be due if the property was privately owned by the taxpayer. The credit is available only if the tax parcel that is subject to the leasehold interest has a market value in excess of \$10,000,000. If the leasehold interest attaches to two or more parcels, the credit is available if at least one of the tax parcels has a market value in excess of \$10,000,000. In either case, the market value must be determined as of January 1st of the year prior to the year for which the credit is claimed. This credit may not be claimed for tax reporting periods beginning on or after January 1, 2032, and the credit may not be claimed or approved on or after January 1, 2032. For purposes of this subsection (4) (c), the following definitions apply:

(i) "Market value" means the true and fair value of the property as that term is used in RCW 84.40.030, based on the property's highest and best use and determined by any reasonable means approved by the department;

(ii) "Real property" has the same meaning as in RCW 84.04.090, and also includes all improvements upon the land the fee of which is still vested in the public owner; and

(iii) "State university" has the same meaning as provided in RCW 28B.10.016.

(5) **When payment is due.** The leasehold excise taxes are due on the same date that the contract rent is due to the lessor. If the contract rent is paid to someone other than the lessor, the leasehold tax is due at the time the payment is made to that other person or entity.

Any prepaid contract rent will be deemed to have been paid in the year due and not in the year in which it was actually paid if the prepayment is for more than one year's rent. If contract rent is prepaid, the leasehold tax payment may be prorated over the number of years for which the contract rent is prepaid. The prorated portion of the tax will be due in two installments per year, with no less than one-half due on or before May 31<sup>st</sup> and the second half due no later than November 30<sup>th</sup> of each year.

(6) **Collection and distribution of tax by the department.** The department collects and distributes the leasehold excise taxes authorized by RCW 82.29A.030 and 82.29A.040.

(a) **Taxes levied by the state.** All money received by the department from leasehold taxes levied under RCW 82.29A.030 is transmitted to the state treasurer for deposit in the general fund.

(b) **Taxes levied by counties and cities.** Prior to the effective date of the ordinance imposing a leasehold excise tax, the county or city imposing the tax must contract with the department for administration and collection services. The department may deduct a percentage, not to exceed two percent, of the taxes collected as reimbursement for administration and collection expenses. RCW 82.29A.080. The department deposits the balance of the taxes collected in the local leasehold excise tax account with the state treasury, and the state treasurer (~~bimonthly~~) distributes those moneys to the counties and cities on a monthly basis.

County treasurers must proportionately distribute the moneys they receive in the same manner they distribute moneys collected from property tax levies in accordance with RCW 84.56.230, provided that no moneys are to be distributed to the state or any city, and the pro rata calculation for proportionate distribution cannot include any levy rates by the state or any city.

(7) **Leasehold interests in federally owned land or federal trust land.** Lessees with a leasehold interest in federally owned lands or federal trust lands must report and remit the leasehold tax due directly to the department on an annual reporting basis.

[Statutory Authority: RCW 82.01.060 and 82.29A.140. WSR 14-14-034, § 458-29A-600, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 82.29A.140. WSR 99-20-053, § 458-29A-600, filed 10/1/99, effective 11/1/99.]