

WSR 22-15-059

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed July 15, 2022, 3:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-18-094.

Title of Rule and Other Identifying Information: WAC 458-20-181 Vessels, including log patrols, tugs and barges, operating upon waters in the state of Washington.

Hearing Location(s): On August 24, 2022, at 10:00 a.m. This meeting will be conducted over the internet/telephone. Please contact Sierra Crumbaker at SierraC@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: September 7, 2022.

Submit Written Comments to: Nikki Bizzarri, P.O. Box 47453, Olympia, WA 98504-7453, email nikkib@dor.wa.gov, fax 360-534-1606, 360-534-1582.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is updating this rule to ensure consistency with the statutory definition of "selling price" in RCW 82.08.010. The department is also updating this rule to accurately reflect current practices of drydocking, vessel haul-out, and vessel repair.

Reasons Supporting Proposal: Businesses engaged in drydocking, vessel haul-out, and vessel repair will find that the updates to the rule clarify statutory language that will assist taxpayers with reporting requirements for business and occupation tax, retail sales tax, use tax, and public utility tax.

Statutory Authority for Adoption: RCW 82.01.060(2), 84.32.300.

Statute Being Implemented: RCW 82.04.050, 82.04.060, 82.04.070, 82.04.080, 82.04.190, 82.04.250, 82.04.270, 82.04.280, 82.04.290, 82.08.010, 82.08.020, 82.08.0293, 82.16.020.

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: Nikki Bizzarri, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1582; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined by RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose more-than-minor costs on businesses, as it does not propose any new requirements not already provided for in statute. The proposed rule does not impose fees, filing requirements, or recordkeeping guidelines that are not already established in statute.

July 15, 2022

Atif Aziz
Rules Coordinator

OTS-3967.1

AMENDATORY SECTION (Amending WSR 83-07-033, filed 3/15/83)

WAC 458-20-181 Vessels, including log patrols, tugs and barges, operating upon waters in the state of Washington.

~~((Business and Occupation Tax~~

~~**Retailing.** Persons engaged in the business of operating such vessels and tugs are taxable under the retailing classification upon the gross sales of meals (including meals to employees) and other tangible personal property taxable under the retail sales tax.~~

~~**Service and other business activities.** The business of operating lighters is a service business taxable under the service and other business activities classification upon the gross income from such service. Also taxable under this classification is gross income from operation of vessels to provide scenic cruises.~~

~~Retail Sales Tax~~

~~Sales of meals and other tangible personal property by persons operating such vessels and tugs are sales at retail and the retail sales tax must be collected thereon. For applicability of retail sales tax where meals are furnished to members of the crew or to other employees as a part of their compensation for services rendered, see WAC 458-20-119.~~

~~Sales of foodstuff and other articles to such operators for resale aboard ship are not subject to retail sales tax.~~

~~Sales to all such operators of fuel, lubricants, machinery, equipment and supplies which are not resold are sales at retail and the retail sales tax must be paid thereon, unless exempt by law.~~

~~Charges made by others for the repair of any boat or barge are also sales at retail and the retail sales tax must be paid upon the total charge made for both labor and materials.~~

~~Charges made for drydocking are not subject to the retail sales tax provided such charges are shown as an item separate from charges made for repairing.~~

~~Use Tax~~

~~The use tax applies upon the use within this state of all articles of tangible personal property purchased at retail and upon which the retail sales tax has not been paid, unless exempt by law.~~

~~Public Utility Tax~~

~~The business of operating upon waters wholly within the state of Washington vessels which are common carriers regulated by the utilities and transportation commission is taxable under the public utility tax as follows:~~

~~(1) Vessels under sixty-five feet in length, taxable under the classification vessels under sixty-five feet upon gross income.~~

~~(2) Vessels sixty-five feet or more in length, taxable under the classification other public service business upon gross income.~~

~~The other public service classification of the public utility tax applies to the business of operating tugs, barges, and log patrols.))~~

~~(1) Introduction. This rule explains the business and occupation (B&O) tax, sales tax, use tax, and public utility tax responsibilities of those operating vessels upon waters in Washington.~~

(2) **Other rules that may apply.** Readers may want to refer to other rules for additional information, including the following:

(a) WAC 458-20-119 Sales by caterers and food service contractors;

(b) WAC 458-20-135 Extracting natural products;

(c) WAC 458-20-145 Sourcing retail sales for business and occupation tax and state and local retail sales tax—Sourcing of use tax for purchasers;

(d) WAC 458-20-175 Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce;

(e) WAC 458-20-176 Commercial deep sea fishing—Commercial passenger fishing—Diesel fuel;

(f) WAC 458-20-178 Use tax and the use of tangible personal property;

(g) WAC 458-20-179 Public utility tax;

(h) WAC 458-20-183 Recreational services and activities;

(i) WAC 458-20-193 Interstate sales of tangible personal property;

(j) WAC 458-20-238 Sales of watercraft to nonresidents—Use of watercraft in Washington by nonresidents;

(k) WAC 458-20-244 Food and food ingredients.

(3) **Terms.** The following terms apply to this rule.

(a) **Lighter.** A lighter is a large boat or barge used in loading and unloading vessels to transfer goods and passengers to and from moored vessels that cannot reach the place of shipment or delivery.

(b) **Dry-docking.** The act of placing a vessel on a dock that can be kept dry for use during the construction or repairing of the vessel, or the act of bringing a vessel to dry land so that the submerged portions of the hull can be cleaned or inspected.

(c) **Vessel haul-out.** The act of removing a vessel from the water. Vessel haul-out is generally accomplished with a large mobile hoist or crane.

(d) **Dry stack storage.** Land-based vessel storage in the form of stacking berths.

(4) **Business and occupation tax.** Retailing B&O tax applies to retail sales and is measured by the gross proceeds of sale unless the sale is for resale, in which case the wholesaling B&O tax applies. RCW 82.04.050, 82.04.060, 82.04.070, 82.04.250 and 82.04.270. Warehousing B&O tax applies to persons engaging in warehousing activities. RCW 82.04.080 and 82.04.280. The gross income of the business from activities that fall into no other B&O tax classification are subject to the service and other activities B&O tax. RCW 82.04.080 and 82.04.290. Subsection (4) of this rule illustrates how the B&O tax applies in a number of common situations.

(a) **Retailing.**

(i) Tangible personal property. Persons engaged in the business of operating vessels and tugs are taxable under the retailing B&O tax classification upon the gross sales to consumers of tangible personal property that are retail sales, including meals (including meals to employees).

(ii) Services. Charges to consumers made by others for the repair of any boat or barge are retail sales and subject to retailing B&O tax. Also, sales of sightseeing or scenic cruises lasting fewer than 24 hours are retail sales and subject to retailing B&O tax, including

sales of sightseeing cruises that are combined with other goods and services when sold for one nonitemized price.

(iii) Dry-docking and haul-out. Sales of dry-docking and vessel haul-out services are retail sales if the services are performed with respect to the sale of retail services, such as repair or maintenance of the vessel for consumers. The gross income from sales of dry-docking and haul-out services in these instances is taxable under the retailing B&O tax classification. The tax treatment described in this subsection applies regardless of whether the charges are separately itemized.

(b) **Service and other business activities.**

(i) Operation of lighters. The business of operating lighters is a service taxable under the service and other business activities B&O tax classification upon the gross income from such service.

(ii) Dry-docking and haul-out. Charges for dry-docking and vessel haul-out services are taxable under the service and other activities B&O tax classification if sold alone or performed only in conjunction with other services taxable under the service and other activities B&O tax classification. RCW 82.04.290.

(c) **Warehousing.**

(i) Dry stack storage. Gross income from operating a dry stack storage warehouse is taxable under the warehousing B&O tax classification.

(ii) Haul-out. Vessel haul-out services are taxable under the warehousing B&O tax classification if performed with respect to the sale of dry stack or warehouse storage of the vessel. RCW 82.04.080 and 82.04.280.

(5) **Retail sales tax.** Retail sales tax is imposed on retail sales unless an exemption applies. RCW 82.04.050 and 82.08.020. The retail sales tax is imposed on the selling price of the product sold in the retail sale. RCW 82.08.010. While not exhaustive, (a) through (c) of this subsection list a number of common situations where retail sales tax will or will not apply.

(a) Tangible personal property. Sales of tangible personal property to consumers, including prepared food, soft drinks, bottled water, or dietary supplements by persons operating vessels and tugs are sales at retail and retail sales tax must be collected. RCW 82.04.050, 82.08.020, and 82.08.0293.

For applicability of retail sales tax where prepared food, including meals, are furnished to members of the crew or to other employees as a part of their compensation for services rendered, see WAC 458-20-119.

Sales of tangible personal property, including food products, to operators for resale aboard ship are not subject to retail sales tax. RCW 82.04.050, 82.04.190, 82.08.0293. Operators claiming a resale exemption should obtain a reseller permit. For more information on reseller permits see WAC 458-20-102.

Sales to all such operators of fuel, lubricants, machinery, equipment, and supplies, which are not resold, are sales at retail and retail sales tax must be paid.

(b) Services. Charges to consumers made by others for the repair of any boat or barge are sales at retail and retail sales tax must be paid upon the total charge made for both labor and materials.

Also, sales of sightseeing or scenic cruises lasting fewer than 24 hours are subject to retail sales tax, including sales of sightseeing cruises that are combined with other goods and services when sold for one nonitemized price.

(c) Dry-docking and haul-out. Sales of dry-docking and vessel haul-out services are retail sales, and subject to retail sales tax, if the services are performed with respect to the sale of retail services, such as repair or maintenance of the vessel for consumers.

(6) Use tax. The use tax applies for the privilege of using within this state as a consumer, among other things, any articles of tangible personal property or services defined as a retail sale in RCW 82.04.050 and identified in RCW 82.12.020, upon which the retail sales tax has not been paid, unless an exemption applies.

(7) Public utility tax. Persons operating vessels upon waters wholly within the state of Washington as common carriers regulated by the utilities and transportation commission are taxable under the public utility tax as follows:

(a) Persons operating vessels under 65 feet in length, other than tugboats, are subject to the public utility tax under the rate applicable to vessels under 65 feet in length on gross income.

(b) Persons operating vessels 65 feet or more in length, are taxable under the "other public service business" classification on gross income.

(c) The "other public service business" classification of the public utility tax applies to the business of operating tugs, barges, and log patrols.

(d) Vessel haul-out services are subject to public utility tax under the motor transportation or urban transportation classification if they are performed in conjunction with hauling or transporting the vessel on public roads.

[Statutory Authority: RCW 82.32.300. WSR 83-07-033 (Order ET 83-16), § 458-20-181, filed 3/15/83; Order ET 70-3, § 458-20-181 (Rule 181), filed 5/29/70, effective 7/1/70.]