

WSR 08-08-072
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed March 31, 2008, 2:47 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-107 Requirement to separately state sales tax— Advertised prices including sales tax, this rule explains the statutory requirement that retail sales tax be separately stated from the selling price on any sales invoice or instrument of sale. It also explains when and how a seller may advertise prices as including the sales tax.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gayle Carlson, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, fax (360) 586-0127, e-mail GayleC@dor.wa.gov, AND RECEIVED BY June 2, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to make the following changes:

- Deleting the definition of "selling price." This definition is not needed for the subject matter of the rule, and actually cites language from a previous version of the statute (RCW 82.08.010);
- The reference to WAC 458-20-119 Sales of meals, for information regarding the requirement for separately stating retail sales tax by a restaurant with a Class H liquor license is replaced with a reference to WAC 458-20-124 Restaurants, cocktail bars, taverns and similar businesses, which currently addresses the issue; and
- The reference to WAC 458-20-257 Warranties and maintenance agreements, is not necessary and is removed.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.08.050.

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: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6126; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

March 31, 2008

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 90-10-080, filed 5/2/90, effective 6/2/90)

WAC 458-20-107 (~~(Selling price—)~~) Requirement to separately state sales tax—Advertised prices including sales tax. (1) (~~(Selling price.)~~) **Introduction.** Under the provisions of RCW 82.08.020 the retail sales tax is to be collected and paid upon retail sales, measured by the (~~("~~)selling price.~~(")~~)

~~((a) The term "Selling price" means the consideration, whether money, credits, rights, or other property except trade-in property of like kind, expressed in the terms of money paid or delivered by a buyer to a seller without any deduction on account of the cost of tangible personal property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes other than taxes imposed under this chapter if the seller advertises the price as including the tax or that the seller is paying the tax, or any other expenses whatsoever paid or accrued and without any deduction on account of losses; . . ."~~ (See RCW 82.08.010(1).)

~~(b) Concerning the tax liabilities and benefits in connection with "trade-in" transactions, see WAC 458-20-247.~~

~~(e))~~ (2) **Retail sales tax separately stated.** RCW 82.08.050 specifically requires that the retail sales tax must be stated separately from the selling price on any sales invoice or other instrument of sale, i.e., contracts, sales slips, and/or customer billing receipts. (For an exception covering restaurant receipts of Class H liquor licensees, see WAC (~~(458-20-119))~~ 458-20-124.) This is required even though the seller and buyer may know and agree that the price quoted is to include state and local taxes, including the retail sales tax.

(a) The law creates a "conclusive presumption" that, for purposes of collecting the tax and remitting it to the state, the selling price quoted does not include the retail sales tax. This presumption is not overcome or rebutted by any written or oral agreement between seller and buyer.

~~((However,))~~ (b) Selling prices may be advertised as including the tax or that the seller is paying the tax and, in such cases, the advertised price (~~(shall)~~) **must** not be considered to be the taxable selling price under certain prescribed conditions explained in this section. Even when prices are advertised as including the sales tax, the actual sales invoices, receipts, contracts, or billing documents must list the retail sales tax as a separate charge. Failure to comply with this requirement may result in the retail sales tax due and payable to the state being computed on the gross amount charged even if it is claimed to already include all taxes due.

~~((2))~~ (3) **Advertising prices including tax.**

(a) The law provides that a seller may advertise prices as including the sales tax or that the seller is paying the sales tax under the following conditions:

(i) The words "tax included" are stated immediately following the advertised price in print size at least half as large as the advertised price print size, unless the advertised price is one in a listed series;

(ii) When advertised prices are listed in series, the words "tax included in all prices" are placed conspicuously at the head of the list in the same print size as the list;

(iii) If the price is advertised as including tax, the price listed on any price tag (~~(shall)~~) must be shown in the same way; and

(iv) All advertised prices and the words "tax included" are stated in the same medium, whether oral or visual, and if oral, in substantially the same inflection and volume.

(b) If these conditions are satisfied, as applicable, then price lists, reader boards, menus, and other price information mediums need not reflect the item price and separately show the actual amount of sales tax being collected on any or all items.

(c) The scope and intent of the foregoing is that buyers have the right to know whether retail sales tax is being included in advertised prices or not and that the tax is not to be used for the competitive advantage or disadvantage of retail sellers.

~~((3) See: WAC 458-20-257 for warranties (guarantees) and maintenance agreements (service contracts).))~~

Reasons Supporting Proposal: SHB 1002, chapter 22, Laws of 2007.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.08.0266 and 82.08.02665.

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: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6126; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

March 31, 2008

Alan R. Lynn

Rules Coordinator

WSR 08-08-073

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed March 31, 2008, 2:49 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-238 Sales of watercraft to nonresidents—Use of watercraft in Washington by nonresidents, explains the tax consequences and tax exemption requirements for sales of watercraft to nonresidents. This rule also explains the use tax reporting requirements of nonresidents bringing watercraft into Washington.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gayle Carlson, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, fax (360) 586-0127, e-mail GayleC@dor.wa.gov, AND RECEIVED BY June 2, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 458-20-238 (Rule 238) to incorporate provisions of chapter 22, Laws of 2007 (SHB 1002). This legislation provides nonresident individuals with a sales tax/one-year use tax exemption for vessels thirty feet and longer. The nonresident individual must purchase a \$500 or \$800 "use permit" based on the size of the vessel, either at the time of purchase in Washington or within fourteen days of bringing the vessel into Washington. The permits are sold by Washington licensed vessel dealers, who will remit the permit fees to the department of revenue.

AMENDATORY SECTION (Amending WSR 00-23-003, filed 11/1/00, effective 12/2/00)

WAC 458-20-238 Sales of watercraft to nonresidents—Use of watercraft in Washington by nonresidents.

(1) **Introduction.** This ~~((rule))~~ section explains the retail sales tax exemption provided by RCW 82.08.0266 for sales to nonresidents of watercraft requiring United States Coast Guard documentation or state registration~~((It also explains))~~; the retail sales tax exemption provided by RCW 82.08.02665 for sales of watercraft to residents of foreign countries; and the retail sales and use tax exemptions contained in Substitute House Bill No. 1002 (SHB 1002), chapter 22, Laws of 2007 relating to sales or use of vessels thirty feet or longer to or by nonresident individuals. These statutes provide the exclusive authority for granting a retail sales tax exemption for sales of such watercraft when delivery is made within Washington. This ~~((rule))~~ section explains the requirements to be met, and the documents which must be preserved, to substantiate a claim of exemption. It also discusses use tax exemptions for nonresidents bringing watercraft into Washington for enjoyment and/or repair.

This ~~((rule))~~ section primarily deals with the retail sales and use taxes where delivery takes place or vessel is used in Washington. Sellers should refer to WAC 458-20-193 Inbound and outbound interstate sales of tangible personal property if they deliver the vessel to the purchaser at an out-of-state location. Purchasers also should be aware that there is a watercraft excise tax which may apply to the purchase or use of watercraft in Washington. (See chapter 82.49 RCW et seq.) In addition, purchasers of commercial vessels may have annual liability for personal property tax. ~~((See RCW 84.08.065.))~~

(2) **Business and occupation (B&O) tax.** Retailing B&O tax is due on all sales of watercraft to consumers if delivery is made within the state of Washington, even though the sale may qualify for an exemption from the retail sales tax. If the seller ~~((is))~~ also ~~((the manufacturer of))~~ manufactures the vessel in Washington, the seller must report under both the manufacturing and wholesaling or retailing classifi-

cations of the B&O tax, and claim a multiple activities tax credit (MATC). Manufacturers should also refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating) and WAC 458-20-19301 (Multiple activities tax credits).

(3) **Retail sales tax.** The retail sales tax generally applies to the sale of watercraft to consumers when delivery is made within the state of Washington. Under certain conditions, however, retail sales tax exemptions are available for sales of watercraft to nonresidents of Washington, even when delivery is made within Washington.

(a) **Exemptions for sales of watercraft, to nonresidents, requiring United States Coast Guard documentation and certain sales of vessels to residents of foreign countries.** RCW 82.08.0266 provides an exemption from the retail sales tax for sales of watercraft to residents of states other than Washington for use outside this state, even when delivery is made within Washington. The exemption provided by RCW 82.08.0266 is limited to sales of watercraft requiring United States Coast Guard documentation or registration with the state in which the vessel will be principally used, but only when that state has assumed the registration and numbering function under the Federal Boating Act of 1958.

RCW 82.08.02665 provides a retail sales tax exemption for sales of vessels to residents of foreign countries for use outside this state, even when delivery is made in Washington. This exemption is not limited to the types of watercraft qualifying for the exemption provided by RCW 82.08.0266. The term "vessel," for the purposes of RCW 82.08.02665, means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane.

~~((b))~~ (i) **Exemption requirements.** The following requirements must be met to perfect any claim for exemption under RCW 82.08.0266 and 82.08.02665:

~~((i))~~ (A) The watercraft must leave Washington waters within forty-five days of delivery;

~~((ii))~~ (B) The seller must examine acceptable proof that the buyer is a resident of another state or a foreign country; and

~~((iii))~~ (C) The seller, at the time of the sale, must retain as a part of its records a completed exemption certificate to document the exempt nature of the sale. This requirement may be satisfied by using the department's "buyer's retail sales tax exemption certificate," or another certificate with substantially the information as it relates to the exemption provided by RCW 82.08.0266 and 82.08.02665. The certificate must be completed in its entirety, and retained by the seller. A blank certificate can be obtained via the internet at <http://dor.wa.gov>, by facsimile by calling Fast Fax at (360) 786-6116 or (800) 647-7706 (using menu options), or by writing to: Taxpayer Services, ~~(Washington State)~~ Department of Revenue, P.O. Box 47478, Olympia, Washington 98504-7478. The seller should not accept an exemption certificate if the seller becomes aware of any information prior to the completion of the sale which is inconsistent with the purchaser's claim of residency, such as a Washington address on a credit application.

~~((e))~~ (ii) **Component parts and repairs.** The exemptions provided by RCW 82.08.0266 and 82.08.02665 apply only to sales of watercraft. For the purposes of these exemp-

tions, the term "watercraft" includes component parts which are installed in or on the watercraft prior to delivery to and acceptance by the buyer, but only when these parts are sold by the seller of the watercraft. "Component part" means tangible personal property which is attached to and used as an integral part of the operation of the watercraft, even if the item is not required mechanically for the operation of the watercraft. Component parts include, but are not necessarily limited to, motors, navigational equipment, radios, depth-finders, and winches, whether themselves permanently attached to the watercraft or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the watercraft in a definite and secure manner.

These exemptions do not extend to the sale of boat trailers, repair parts, or repair labor. These exemptions also do not extend to a separate seller of unattached component parts, even though these parts may be manufactured specifically for the watercraft and/or permanently installed in or on the watercraft prior to the watercraft being delivered to and accepted by the buyer.

(b) Exemption for vessels thirty feet or longer. Effective July 1, 2007, SHB 1002, chapter 22, Laws of 2007, a retail sales tax exemption is available for sales of vessels thirty feet or longer to individuals who are nonresidents of Washington.

(i) Exemption requirements. The following requirements must be met in order for an individual to claim this exemption:

(A) The individual must provide valid proof of nonresidency at the time of purchase;

(B) The vessel purchased must measure at least thirty feet in length; and

(C) The individual must obtain a valid use permit from the vessel dealer authorized to sell use permits.

(ii) Valid proof of nonresidency. An individual may prove nonresidency with identification that:

(A) Includes a photograph of the individual;

(B) Is issued by the jurisdiction in which the individual claims residency;

(C) Includes the individual's residential address; and

(D) Is issued for the purpose of establishing an individual's residency in a jurisdiction outside Washington state.

Acceptable identification includes a valid out-of-state driver's license.

(iii) Use permits. A use permit is not renewable and costs five hundred dollars for vessels thirty to fifty feet and eight hundred dollars for vessels greater than fifty feet in length. The permit includes an affidavit (affidavit) from the buyer declaring that the purchased vessel will be used in a manner consistent with this exemption. The use permit also includes an adhesive sticker (sticker) that must be displayed on the purchased vessel and which is valid for twelve consecutive months from the date of purchase. The sticker serves as proof of a validly issued use permit. Vessel dealers are not obligated to issue use permits to any individual. Buyers must elect this exemption irrevocably and may not elect additional exemptions under RCW 82.08.0266 and 82.08.02665 for the same period. Individuals must wait twenty-four months from

the expiration of a use permit before claiming the use tax exemption for their vessel pursuant to RCW 82.12.0251.

(iv) **What are the obligations of vessel dealers?** A vessel dealer who elects to issue a use permit under this section has the following obligations:

(A) Examine and determine, in good faith, whether the individual has valid proof of nonresidency.

(B) Use department of revenue's (department) approved use permits. Obtain department's use permits from: Taxpayer Account Administration Division, Department of Revenue, P.O. Box 47476, Olympia, Washington 98504-7476, Telephone 360-902-7065.

(C) Retain copies of issued use permits in his or her records for the statutory period. For information about the statutory period, please refer to WAC 458-20-254 Record-keeping.

(D) Provide copies of issued use permits to the department on a quarterly basis. Copies of issued permits must be sent to: Taxpayer Account Administration Division, Department of Revenue, P.O. Box 47476, Olympia, Washington 98504-7476.

(E) Collect, remit and report use permit fees. Dealers report use permit fees on their excise tax returns and remit in accordance with RCW 82.32.045.

(F) Electronically file all returns, as described in RCW 82.32.050, with the department. Nonelectronically filed returns are not deemed filed unless approved by the department for good cause shown.

(v) **Liability for retail sales and use tax.**

(A) If an individual obtains a use permit for a vessel under this section and uses that vessel in Washington after the use permit expires, the individual will be liable for retail sales tax on the original selling price of that vessel (along with interest retroactive to the date of purchase at the rate provided in RCW 82.32.050).

(B) Vessel dealers will be personally liable for retail sales tax if the dealer either does not collect retail sales tax when making sales to individuals without valid identification establishing nonresidency, or fails to maintain records of sales as provided under (b)(iv) of this subsection.

(4) **Deferred retail sales or use tax.** If Washington retail sales tax has not been paid, persons using watercraft on Washington waters are required to report and remit to the department such sales tax (commonly referred to as deferred retail sales tax) or use tax, unless the use is specifically exempt by law. A credit against Washington's use tax is allowed for retail sales or use tax previously paid by the user or the user's bailor or donor with respect to the property to any other state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof, prior to the use of the property in Washington. RCW 82.12.035. See also WAC 458-20-178 Use tax.

(a) Tax is due on the use by any nonresident of watercraft purchased from a Washington vendor and first used within this state for more than forty-five days if retail sales or use tax has not been paid by the user. Tax is due notwithstanding the watercraft qualified for retail sales tax exemption at the time of purchase.

(b) Use tax does not apply to the temporary use or enjoyment of watercraft brought into this state by nonresidents while temporarily within this state.

~~((Except as otherwise provided in this rule))~~ (i) For watercraft owned by nonresident entities (i.e., corporations, limited liability companies, trusts, partnerships, etc.), it will be presumed that use within Washington exceeding sixty days in any twelve-month period is more than temporary use and use tax is due, except as otherwise provided in this section.

~~((Effective January 1, 1998,))~~ (ii) Nonresident individuals (whether residents of other states or foreign countries) may temporarily bring watercraft into this state for their use or enjoyment without incurring liability for the use tax if such use does not exceed a total of six months in any twelve-month period. To qualify for this six-month exemption period, the watercraft must be issued a valid number under federal law or by an approved authority of the state of principal operation, be documented under the laws of a foreign country, or have a valid United States customs service cruising license. The watercraft must also satisfy all identification requirements under RCW 88.02.030 for any period after the first sixty days. Failure to meet the applicable documentation and identification requirements will result in a loss of the exemption. ~~((Prior to January 1, 1998, the temporary use exemption period was limited to sixty days for all nonresident users of watercraft.))~~

(c) Watercraft owned by nonresidents and in this state exclusively for repair, alteration, or reconstruction are exempt from the use tax if removed from this state within sixty days. If repair, alteration, or reconstruction cannot be completed within this period, the exemption may be extended by filing with the department's ~~((of revenue))~~ compliance division an affidavit as required by RCW 88.02.030 verifying the vessel is located upon the waters of this state exclusively for repair, alteration, reconstruction, or testing. This document, titled "Nonresident Out-of-State Vessel Repair Affidavit," is effective for sixty days. If additional extensions of the exemption period are needed, additional affidavits must be sent to the department. Failure to file this affidavit can ~~((also))~~ result in requiring that the vessel be registered in Washington and subject to the use tax.

(d) Use tax exemption for vessels thirty feet or longer. Effective July 1, 2007, SHB 1002, chapter 22, Laws of 2007 exempts from use tax the purchase of vessels thirty feet or longer used in Washington by nonresident individuals. This exemption is available to nonresident individuals in any of the three following situations: The vessel is purchased from a vessel dealer and a use permit is obtained in accordance with subsection (3)(b) of this section; the vessel is purchased in Washington from someone other than a vessel dealer and within fourteen days of purchase the nonresident individual obtains a use permit under this subsection; the vessel is acquired outside Washington and the nonresident individual, within fourteen days of bringing the vessel into Washington, buys a use permit under this subsection. Any vessel dealer that issues permits under subsection (3)(b) of this section must also issue permits under this subsection.

(i) **What are the obligations of vessel dealers?** Vessel dealers that issue use permits have the same obligations as

those described in subsection (3)(b)(iv) of this section. Vessel dealers may not issue use permits under this subsection where a nonresident individual has already obtained a use permit under subsection (3)(b) of this section.

(ii) **Valid proof of nonresidency.** Nonresident individuals must meet the same identification requirements described in subsection (3)(b)(ii) of this section.

(iii) **Use permits.** The use permit is not renewable and costs five hundred dollars for vessels thirty to fifty feet and eight hundred dollars for vessels greater than fifty feet in length. This use permit must be displayed on the vessel and is valid for twelve consecutive months from the date of issuance. Nonresident individuals must obtain a use permit from a vessel dealer; however, vessel dealers are not obligated to issue these use permits. Nonresident individuals must elect this exemption irrevocably and may not elect exemption under RCW 82.08.0266 and 82.08.02665 for the same period. The nonresident individual must wait twenty-four consecutive months from the expiration of a use permit before claiming exemption for a vessel under RCW 82.12.0251.

(iv) **Liability for use tax.**

(A) If a nonresident individual continues to use a vessel in Washington after his or her use permit expires, that individual shall be liable for use tax under RCW 82.12.020. Liability for use tax will be based upon the value of the vessel at the time it was either purchased or first brought into Washington. Interest will accrue retroactive to the date of purchase or first use in Washington at a rate set by RCW 82.32.050.

(B) Vessel dealers are personally liable for use tax where a dealer either issues a use permit to a nonresident individual who does not hold valid proof of nonresidency, or fails to maintain records for each use permit issued showing the type of identification accepted, the identification numbers, and expiration date.

(5) **Examples.** The following examples 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 facts and circumstances. In all examples, retailing B&O tax is due from the seller for all sales of watercraft and parts, and all charges for repair parts and labor.

(a) Mr. Kelley, a resident of California, pilots his cabin cruiser which is registered in that state into Puget Sound for his enjoyment. On the sixtieth day of his stay, Mr. Kelley obtains an identification document for the cabin cruiser under RCW 88.02.030 (~~for the boat~~) from the department of licensing. To further extend his stay in Washington waters, he applies for a second identification document within the prescribed period. In the middle of his fifth month on Puget Sound, Mr. Kelley departs and returns the craft to its home port in California. The stay would not subject Mr. Kelley to use tax. On the other hand, if Mr. Kelley were a resident of Vancouver, British Columbia, bringing a vessel registered in Canada, he would also have to timely obtain and display the appropriate identification document required by RCW 88.02.030 to allow his temporary use of the watercraft in Washington.

(b) Company A sells a yacht to John Doe, an Oregon resident, who takes delivery in Washington. The yacht is required to be registered by the state of Oregon. The vessel is

removed from Washington waters within forty-five days of delivery. Company A examines a driver's license confirming John Doe to be an Oregon resident, and records this information in the sales file. Company A does not complete and retain the required exemption certificate.

The sale of the yacht is subject to the retail sales tax. The exclusive authority for granting a retail sales tax exemption for this sale is provided by RCW 82.08.0266. Completion of an exemption certificate is a statutorily imposed condition for obtaining this exemption. Company A has not satisfied the conditions and requirements necessary to grant an exemption under this statute. The exemption provisions under RCW 82.08.0273 for sales to nonresidents of states having less than three percent retail sales tax can not be used for purchases of vessels which require United States Coast Guard documentation, or registration in the state of principal use. If the exemption certificate had been properly completed at the time of sale, this sale would have qualified for retail sales tax exemption.

(c) Mr. Jones, a California resident, contracts Company B to manufacture a pleasure yacht. Mr. Jones purchases a boat motor from Company Y with instructions that delivery be made to Company B for installation on the yacht. The yacht is required to be registered with the state of California, which has assumed the registration and numbering function under the Federal Boating Act of 1958. Company B examines Mr. Jones' driver's license to verify Mr. Jones is a nonresident of Washington, and retains the proper exemption certificate at the time of sale. Delivery is made in Washington, and Mr. Jones removes the vessel from Washington waters within forty-five days of delivery.

The sale of the yacht by Company B to Mr. Jones is not subject to the retail sales tax, as the requirements and conditions for exemption have been satisfied. Retail sales tax does, however, apply to the sale of the motor by Company Y to Mr. Jones. The exemption provided by RCW 82.08.0266 does not extend to a separate seller of unattached component parts, even though the parts are installed in the watercraft prior to delivery.

(d) Mr. Smith, a resident of British Columbia, Canada, brings his yacht into Washington with the intention of temporarily using the yacht for personal enjoyment. Mr. Smith obtains the required identification document issued by the department of licensing. After four months of personal use, the yacht experiences mechanical difficulty. The yacht is taken to a repair facility and due to the extensive nature of the damage the yacht remains at the repair facility for six months. As explained in subsection (4)(c) (~~above~~) of this section, Mr. Smith makes a timely filing of each required "Nonresident Out-of-State Vessel Repair Affidavit." An employee of the repair facility is on board the yacht during all testing, and there is no personal use by Mr. Smith during this period. Upon completion of the repairs and testing, Mr. Smith takes delivery at the repair facility.

Mr. Smith may personally use the yacht in Washington waters for up to two months after taking delivery of the repaired yacht. He will not incur liability for use tax because the in-state use of the yacht for personal enjoyment will not exceed six months in a twelve-month period. The time the yacht is at the repair facility exclusively for repair does not

count against the period of time Mr. Smith is considered to be "temporarily" using the yacht in Washington for personal enjoyment. Retail sales tax is due, and must be paid, however, on all charges for repair parts and labor. The exemption from sales tax for purchases of vessels does not extend to repairs.

WSR 08-08-079
WITHDRAWAL OF
EXPEDITED RULE MAKING
DEPARTMENT OF
LABOR AND INDUSTRIES
(By the Code Reviser's Office)
[Filed April 1, 2008, 8:53 a.m.]

WAC 296-14-522, 296-14-524, 296-14-526 and 296-14-527, proposed by the department of labor and industries in WSR 07-19-084 appearing in issue 07-19 of the State Register, which was distributed on October 3, 2007, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register