

WSR 24-09-053

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed April 15, 2024, 11:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-087.

Title of Rule and Other Identifying Information: WAC 458-20-182 Warehouse businesses, and new WAC 458-20-18201 Warehouse and grain elevators and distribution centers exemption—Remittance.

Hearing Location(s): On May 23, 2024, at 10:00 a.m. This meeting will be conducted over the internet/telephone. Please contact Cathy Holder at CathyH@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: June 3, 2024.

Submit Written Comments to: Perry Stern, P.O. Box 47453, Olympia, WA 98504-7453, email PerryS@dor.wa.gov, fax 360-534-1606, by May 31, 2024.

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: WAC 458-20-182, the purpose of this rule-making effort is to update the definitions for "storage warehouse" and "warehouse" to match the definitions in RCW 82.04.280 and 82.08.820. Additionally, this rule-making effort adds subsections regarding dry stack storage, portable self-storage containers, prescription drug warehousing, and other rules to reference. Other changes have been made to enhance readability of the rule.

New WAC 458-20-18201, the purpose of this rule-making effort is to provide information about the qualifying criteria, application, and documentation requirements for the retail sales and use tax exemptions provided in RCW 82.08.820 and 82.12.820, respectively.

Reasons Supporting Proposal: WAC 458-20-182, this rule will provide updated definitions.

WAC 458-20-18201, this rule will provide information on filing and application requirements.

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

Statute Being Implemented: RCW 82.04.280, 82.08.820, and 82.12.820.

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: Perry Stern, 6400 Linderson Way S.W., Tumwater, WA, 360-524-1588; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-531-1615.

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. The rule is not a significant legislative rule as defined by RCW 34.05.328.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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 taxpayers, as it does not propose any requirements not

already provided for in the statute. The proposed rule does not impose new fees, filing requirements, or recordkeeping guidelines that are not already established in the statute.

April 15, 2024
Brenton Madison
Rules Coordinator

OTS-5209.1

AMENDATORY SECTION (Amending WSR 87-05-042, filed 2/18/87)

WAC 458-20-182 Warehouse and other storage businesses. (1) **In-troduction.** This rule explains the application of the business and occupation (B&O) tax and retail sales and use taxes to warehouse and other storage businesses. It also clarifies the taxability for some specific storage-related activities.

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

(a) WAC 458-20-115 Sales of packing materials and containers;

(b) WAC 458-20-118 Sale or rental of real estate, license to use real estate;

(c) WAC 458-20-133 Frozen food lockers;

(d) WAC 458-20-180 Motor carriers;

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

(f) WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce; and

(g) WAC 458-20-211 Leases or rentals of tangible personal property, bailments.

(3) **Definitions.** ((For purposes of this section)) The following terms and meanings ((will)) apply to this rule:

(a) ~~((("Warehouse" means every structure wherein facilities are offered for the storage of tangible personal property.~~

~~((("Storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW (which are agricultural commodities warehouses), public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini-storage" facilities whereby customers have direct access to individual storage areas by separate access.~~

~~((("Automobile storage garage" means any off-street building, structure, or area where vehicles are parked or stored, for any period of time, for a charge.~~

~~((("Cold storage warehouse" means a storage warehouse used to store either fresh ((and/)) or frozen, or both types of perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination ((thereof)), at a desired temperature to maintain the quality of the product for orderly marketing. RCW 82.04.280. This term does not include freezer space or frozen food lockers. See WAC 458-20-133.~~

~~((d)) "Automobile storage garage" means any off-street building, structure, or area where vehicles are parked or stored, for any period of time, for a charge.~~

~~(2)) (c) "Storage warehouse" means any part of a building or structure in which goods, wares, or merchandise are received for storage for compensation. "Storage warehouse" does not include field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW, automobile storage garages, railroad freight sheds, docks and wharves, and "self-storage" or "mini-storage" facilities where customers have direct access to individual storage areas by a separate entrance. RCW 82.04.280. "Storage warehouse" also does not include a building or structure, or that part of the building or structure, in which an activity taxable under RCW 82.04.272, warehousing and reselling prescription drugs, is conducted. RCW 82.04.280.~~

~~(d) "Warehouse" means every structure where facilities are used for the storage of tangible personal property.~~

~~(4) **Business and occupation tax.** ((Warehouse)) The B&O tax is imposed on privilege of engaging in business in Washington. The measure of the B&O tax is the gross income of the business (gross income) or gross proceeds of sale (gross proceeds) as the case may be. RCW 82.04.080 and 82.04.090. Businesses that provide storage services are taxable under the B&O tax classification according to the nature of their ((operations)) activities and the specific kinds of goods stored, as follows:~~

~~(a) Warehousing classification.~~

~~(i) Persons engaged in operating any "storage warehouse" or "cold storage warehouse," as defined ((herein)) in subsection (3) of this rule, are subject to B&O tax under the warehousing classification ((, measured by the gross income of the business)). ((+)) See RCW 82.04.280. ((+))~~

~~((b)) (ii) Types of activities that fall within the warehousing classification include dry stack storage and storing a third-party's items within a storage container in the person's warehouse. The fact that the third party lacks dominion and control over the warehouse storage area distinguishes, in part, a warehousing activity from activities taxable under other B&O tax classifications.~~

Example 1.

Facts: Safe Harbor, LLC (Safe Harbor) is a Washington business engaged in providing dry stack storage. Dave purchases a boat storage space from Safe Harbor for the boating season. When Dave wishes to use his boat, he contacts Safe Harbor and the Safe Harbor operator removes Dave's boat from its storage slot and places it in the water. When Dave is finished using his boat, he leaves it in Safe Harbor's dock where the operator lifts the boat from the water and returns it to the stack. The haul-out service is included as part of the dry stack storage.

Result: Dave lacks dominion and control over the stacking berth. Consequently, the charge for the use of a stacking berth is a warehousing activity and not a rental of real estate. The haul-out service is taxable under the warehousing B&O tax classification because it is performed with respect to the dry stack storage of Dave's boat. Safe Harbor must report and pay warehousing B&O tax on its gross income from operating a dry stack storage warehouse. RCW 82.04.080 and 82.04.280.

Example 2.

Facts: Your PNW Storage, LLC (YPS) is engaged in the business of storing a third-party's items within a storage container in YPS' ware-

house. YPS maintains control over the storage container when it is stored at YPS' warehouse.

Result: YPS is subject to B&O tax under the warehousing classification. The third party lacks dominion or control over the warehouse storage area which distinguishes, in part, a warehousing activity from activities taxable under other B&O tax classifications.

(iii) If a person is engaged in warehousing and also provides related services including handling, sorting, weighing, measuring, and loading or unloading tangible personal property for storage, the gross income from these services is included in the person's gross income from warehousing.

(iv) A person storing third-party goods, incidental to the person's provision of order fulfillment services to the third party, is not operating a storage warehouse or cold storage warehouse for purposes of the warehousing B&O tax classification.

(b) Retailing classification.

(i) Persons engaged in operating any automobile storage garage for consumers are generally subject to B&O tax under the retailing classification (, measured by gross proceeds of such operations). ((See)) RCW 82.04.050 ((3)(d).)) and 82.04.250.

((c) Persons engaged in operating any warehouse business, other than those of (a) and (b) of this subsection, are subject to tax under the service classification, measured by the gross income of the business. (See RCW 82.04.290.) This includes cold storage and frozen food lockers, field warehouses, fruit warehouses, agricultural commodities warehouses, and freight storage warehouses.

(d) Effective July 1, 1986, no warehouse business or operation of any kind is subject to tax under the public utility tax of chapter 82.16 RCW.

(3) **Tax measure.** The gross income of the business of operating a warehouse includes all income from the storing, handling, sorting, weighing, measuring, and loading or unloading for storage of tangible personal property.

(4)) However, amounts received for the rental of designated parking spaces are derived from the rental of real estate and are not subject to retail sales tax or B&O tax. See (4) (e) of this rule for more information on the exemption for rental of real estate.

(ii) Persons renting or leasing to a consumer tangible personal property used to store goods are making retail sales. See RCW 82.04.040 and 82.04.050 and WAC 458-20-211.

Example 3.

Facts: Porta-Closet, LLC (Porta-Closet) is engaged in renting portable self-storage containers to customers that are stored at the customer's site rather than in a warehouse.

Result: Porta-Closet is subject to B&O tax under the retailing classification on the gross proceeds of sales from the activity. B&O tax under the retailing classification also applies to any transportation charges for delivery or pick-up of the portable storage containers to or from the customer's site. See WAC 458-20-211. However, public utility tax applies to transportation charges for moving the portable storage containers between the customer's different sites.

(c) Prescription drug warehousing classification. Persons engaged in warehousing and reselling drugs for human use under a prescription are subject to B&O tax under the warehousing and reselling prescription drugs classification. See RCW 82.04.272.

(i) A person qualifies for the prescription drug warehousing classification only if it satisfies all of the following requirements:

(A) Purchases prescription drugs from a manufacturer or wholesaler;

(B) Warehouses and resells the prescription drugs directly to a qualified buyer;

(C) Is registered with the Federal Drug Enforcement Administration;

(D) Is licensed as either a wholesaler or retailer by the state pharmacy quality assurance commission established by RCW 18.64.001; and

(E) Resells the prescription drugs directly to a retailer with a pharmacy facility license or nonresidential pharmacy license issued by the department of health under RCW 18.64.043 or 18.64.370, respectively, or to a hospital, clinic, health care provider, or other provider of health care services.

(ii) While the person must be engaged in both the warehousing and reselling of prescriptions drugs to be eligible for the preferential B&O tax rate, it is not necessary for the person's warehouse to be located in Washington to qualify.

(d) Wholesaling. A person engaged as a lessor of storage equipment or containers is not required to pay retail sales or use tax on purchases of storage containers and other related equipment that are leased to a customer and subsequently leased to other customers without intervening use. The original rental is subject to wholesaling B&O tax and the subsequent rental is subject to the retailing B&O tax. The original seller is required to obtain a reseller permit (WAC 458-20-102) to substantiate the wholesale nature of the transaction. WAC 458-20-211.

(e) Service and other classification.

(i) Persons engaged in storage activities not described in subsection (4) (a), (b), (c), or (d) of this rule, and that are not otherwise addressed in any other specific B&O tax classification, are subject to B&O tax under the service and other B&O classification.

(ii) Granting of a license to use real estate is taxable under the service and other B&O tax classification unless specifically classified otherwise by statute. RCW 82.04.290 and WAC 458-20-118(1). A license to use real estate grants merely a right to use the real property of another but does not confer exclusive control or dominion over the same.

(iii) Storage activities that fall within the service and other classification include freezer space and frozen food lockers, field warehouses, agricultural commodities warehouses, and freight storage warehouses.

Example 4.

Facts: South Pole Storage (South Pole) is engaged in the business of renting frozen food lockers. Cara rents a frozen food locker from South Pole for the purpose of storing large cuts of beef, which she purchases from a local cattle ranch for her family's consumption. South Pole does not alter the meat in any way; it merely provides storage.

Result: South Pole's gross income from the rental of the frozen food lockers is taxable under the service and other activities classification. See WAC 458-20-133.

(f) Exempt from B&O tax. Amounts derived from the sale and rental of real estate are exempt from B&O tax. See RCW 82.04.390 and WAC 458-20-118. A transaction will be considered the rental of real estate if all of the following five elements are met:

(i) A rental period of 30 days or longer;

(ii) The lessee has the right to exclusive use of the rented space;

(iii) The lessee has the right of continuous possession over the space;

(iv) The lessee has dominion and control of the rented space; and

(v) A landlord/tenant relationship exists between the lessor and lessee. See WAC 458-20-118.

Example 5.

Facts: More Space Company (MSC) rents self-service storage units. All of the storage units have separate entrances. Carter enters into a six-month contract with MSC for an individual storage unit for his furniture while he works in Denmark.

Result: Carter likely has dominion and control of the rented space. Thus, MSC's gross income received from the rental of its storage unit to Carter is exempt from B&O tax because it is a rental of real estate.

(5) Grain warehouses storing own grain. Where a grain ((warehouseman)) warehouser purchases or owns grain stored in such warehouse, ((there shall be included in)) taxable gross income includes:

(a) An amount equal to the charges at the customary rate for all services ((rendered)) given in connection with ((such)) the grain((s)) up to the time of purchase by the ((warehouseman)) warehouser; and

(b) The amount of any charges for services that are ((rendered)) given during the period of the ((warehouseman's)) warehouser's ownership ((thereof)) of the grain, billed and stated((, as such,)) separately from the price of the grain((s)) on the invoice to the purchaser at the time of the sale by the ((warehouseman)) warehouser.

~~((5)) (6) Retail sales tax and use tax.~~ ((Persons operating automobile garage storage businesses must collect and report retail sales tax upon the gross selling price of such parking/storage services.

~~(6) Consumables.~~ Retail sales tax is due on the sale of tangible personal property or retail services to a consumer as provided in chapter 82.04 RCW. Persons ((engaged in)) operating any of the business activities ((covered by)) described in this ((section)) rule must pay retail sales tax ((upon)) on their purchases of their consumable supplies, equipment, and materials for their own use as consumers in operating ((such)) the businesses. ~~((7) Use tax.~~ The Use tax is due ((upon)) on the value of all tangible personal property used as consumers by persons operating warehouse businesses, upon which the retail sales tax has not been paid.

~~((For specific provisions covering temporary holding of goods in foreign or interstate movement by water, see WAC 458-20-193D respecting stevedoring and associated activities.))~~ (a) Portable storage containers. A person engaged in the business of providing portable self-storage containers to customers for temporary storage must pay retail sales tax upon their purchases of property used in the operation of the business. A purchase of a storage container is subject to retail sales tax when the container is used for storage at the purchaser's warehouse rather than rented to customers for use at the customer's location. A reseller permit may not be used to purchase consumable supplies, equipment, and materials used in the operation of a business. See WAC 458-20-211.

(b) Automobile garage parking/storage. Persons operating any automobile storage garage must collect and report retail sales tax upon the gross selling price of the parking/storage services to consumers.