



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 06, 2022

TIME: 2:09 PM

WSR 22-24-098

Agency: Department of Revenue

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose:

The department is updating WAC 458-20-195 due to changes from recent legislation, Substitute House Bill 1703. The changes include minor grammatical changes and removing the word "enhanced" from "enhanced 911."

Citation of rules affected by this order:

New:

Repealed:

Amended: WAC 458-20-195

Suspended:

Statutory authority for adoption: RCW 82.01.060 and RCW 82.32.300.

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 22-20-010 on 9/22/22 (date).

Describe any changes other than editing from proposed to adopted version: N/A

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: N/A

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	<u>1</u>	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

The number of sections adopted on the agency's own initiative:

New	___	Amended	<u>1</u>	Repealed	___
-----	-----	---------	----------	----------	-----

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: December 6, 2022

Name: Atif Aziz

Title: Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 22-08-114A, filed 3/31/22, effective 5/1/22)

WAC 458-20-195 Taxes, deductibility. (1) **Introduction.** This rule explains the circumstances under which taxes may be deducted from the gross amount reported as the measure of tax under the business and occupation tax, retail sales tax, and public utility tax. It also lists deductible and nondeductible taxes.

(2) **Deductibility of taxes.** In computing tax liability, the amount of certain taxes may be excluded or deducted from the gross amount reported as the measure of tax under the business and occupation (B&O) tax, the retail sales tax, and the public utility tax. These taxes may be deducted provided they have been included in the gross amount reported under the classification with respect to which the deduction is sought, and have not been otherwise deducted through inclusion in the amount of another allowable deduction, such as credit losses.

The amount of taxes which are not allowable as deductions or exclusions must in every case be included in the gross amount reported. License and regulatory fees are not deductible. Questions regarding the deductibility or exclusion of a tax that is not specifically identified in this rule should be submitted to the department of revenue for determination.

(3) **Motor vehicle fuel taxes.** RCW 82.04.4285 provides a B&O tax deduction for certain state and federal motor vehicle fuel taxes when the taxes are included in the sales price. These taxes include:

Fuel tax.....	chapter 82.38 RCW;
Federal tax on diesel and special motor fuels (including leaking underground storage tank taxes), except train and aviation fuels.....	26 U.S.C.A. Sec. 4041;
Federal tax on inland waterway commercial fuel..	26 U.S.C.A. Sec. 4042;
Federal tax on gasoline and diesel fuel for use in highway vehicles and motorboats....	26 U.S.C.A. Sec. 4081.

(4) **Taxes collected as an agent of municipalities, the state, or the federal government.** The amount of taxes collected by a taxpayer, as agent for municipalities, the state of Washington or its political subdivisions, or the federal government, may be deducted from the gross amount reported. These taxes are deductible under each tax classification of the Revenue Act under which the gross amount from such sales or services must be reported.

This deduction applies only where the amount of such taxes is received by the taxpayer as collecting agent and is paid by the agent directly to a municipality, the state, its political subdivisions, or to the federal government. When the taxpayer is the person upon whom a tax is primarily imposed, no deduction or exclusion is allowed, since in such case the tax is a part of the cost of doing business. The mere fact that the amount of tax is added by the taxpayer as a separate item to the price of goods sold, or to the charge for services rendered, does not in itself, make such taxpayer a collecting agent for the purpose of this deduction. Examples of deductible taxes include:

FEDERAL—	
Tax on communications services (telephone and teletype-writer exchange services).	26 U.S.C.A. Sec. 4251;
Tax on transportation of persons.	26 U.S.C.A. Sec. 4261;
Tax on transportation of property.	26 U.S.C.A. Sec. 4271;
STATE—	
988 crisis hotline tax collected from subscribers.	chapter 82.86 RCW;
Aviation fuel tax collected from buyers by a distributor as defined by RCW 82.42.010	chapter 82.42 RCW;
Leasehold excise tax collected from lessees.	chapter 82.29A RCW;
Oil spill response tax collected from taxpayers by marine terminal operators. . .	chapter 82.23B RCW;
Retail sales tax collected from buyers.	chapter 82.08 RCW;
Solid waste collection tax collected from buyers.	chapter 82.18 RCW;
State ((enhanced)) 911 tax collected from subscribers. . .	chapter 82.14B RCW;
Use tax collected from buyers.	chapter 82.12 RCW;
MUNICIPAL—	
City admission tax.	RCW 35.21.280;
County admissions and recreations tax.	chapter 36.38 RCW;
County ((enhanced)) 911 tax collected from subscribers. . .	chapter 82.14B RCW;
Local retail sales and use taxes collected from buyers.	chapter 82.14 RCW.

(5) **Specific taxes which are not deductible.** Examples of specific taxes which may be neither deducted nor excluded from the measure of the tax include the following:

FEDERAL—	
Agricultural Adjustment Act (A.A.A.) compensating tax.	7 U.S.C.A. Sec. 615(e);
A.A.A. processing tax.	7 U.S.C.A. Sec. 609;
Aviation fuel.	26 U.S.C.A. Sec. 4091;
Distilled spirits, wine, and beer taxes.	26 U.S.C.A. chapter 51;
Diesel and special motor fuel tax for fuel used for purposes other than motor vehicles and ((motor boats)) <u>motorboats</u>	26 U.S.C.A. Sec. 4041;

Employment taxes. . . .	26 U.S.C.A. chapters 21-25;
Estate taxes.	26 U.S.C.A. chapter 11;
Firearms, shells, and cartridges.	26 U.S.C.A. Sec. 4181;
Gift taxes.	26 U.S.C.A. chapter 12;
Importers, manufacturers, and dealers in firearms. . . .	26 U.S.C.A. Sec. 5801;
Income taxes.	26 U.S.C.A. Subtitle A;
Insurance policies issued by foreign insurers.	26 U.S.C.A. Sec. 4371;
Sale and transfer of firearms tax.	26 U.S.C.A. Sec. 5811;
Sporting goods.	26 U.S.C.A. Sec. 4161;
Superfund tax.	26 U.S.C.A. Sec. 4611;
Tires.	26 U.S.C.A. Sec. 4071;
Tobacco excise taxes. .	26 U.S.C.A. chapter 52;
Wagering taxes.	26 U.S.C.A. chapter 35;
STATE —	
Ad valorem property taxes.	Title 84 RCW;
Alcoholic beverages licenses and stamp taxes (Breweries, distillers, distributors, and wineries).	chapter 66.24 RCW;
Aviation fuel tax when not collected as agent for the state.	chapter 82.42 RCW;
Boxing, sparring and wrestling tax.	chapter 67.08 RCW;
Business and occupation tax.	chapter 82.04 RCW;
Cigarette tax.	chapter 82.24 RCW;
Estate tax.	Title 83 RCW;
Insurance premiums tax	chapter 48.14 RCW;
Hazardous substance tax.	chapter 82.21 RCW;
Litter tax.	chapter 82.19 RCW;
Pollution liability insurance fee.	RCW 70A.149.080;
Parimutuel tax.	RCW 67.16.100;
Petroleum products - underground storage tank tax.	chapter 82.23A RCW;
Public utility tax.	chapter 82.16 RCW;
Real estate excise tax. .	chapter 82.45 RCW;
Tobacco products tax. .	chapter 82.26 RCW;
Use tax when not collected as agent for state.	chapter 82.12 RCW;
MUNICIPAL—	

Local use tax when not collected as agent for cities or counties.	chapter 82.14 RCW;
Municipal utility taxes.	chapter 54.28 RCW;
Municipal and county real estate excise taxes.	chapter 82.46 RCW.