



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON
FILED

DATE: November 16, 2023

TIME: 3:13 PM

WSR 23-23-127

Agency: Department of Revenue

Title of rule and other identifying information: (describe subject) WAC 458-20-265 Sales and use tax exemption – Airplane maintenance repair stations.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Department of Revenue intends to update this rule to reflect changes based on 2023 legislation, Substitute House Bill 1318.

Reasons supporting proposal: The Washington legislature enacted statutory amendments to RCW 82.08.025661 and RCW 82.12.025661 and the Department of Revenue is updating this rule to reflect these changes.

Statutory authority for adoption: RCW 82.32.300; RCW 82.01.060

Statute being implemented: RCW 82.08.025661 and RCW 82.12.025661

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

Name of proponent: (person or organization)

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Chelsea Brenegan	6400 Linderson Way SW, Tumwater, WA	360-534-1530
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Enforcement:	John Ryser	6400 Linderson Way SW, Tumwater, WA	360-534-1605

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): The expedited rule-making process is appropriate for this rule because the Department is incorporating the changes resulting from 2023 legislation and fixing typographical errors that do not change the effect of the rule.

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

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AND RECEIVED BY (date) January 22, 2024

Date: November 16, 2023

Name: Atif Aziz

Title: Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 22-24-103, filed 12/6/22, effective 1/6/23)

WAC 458-20-265 Sales and use tax exemption—Airplane maintenance repair stations. (1)(a) **Introduction.** This rule explains the retail sales and use tax exemption, as described in RCW 82.08.025661 and 82.12.025661, for the construction of airplane maintenance repair stations operated by an eligible maintenance repair operator.

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

(i) WAC 458-20-229 Refunds.

(ii) WAC 458-20-267 Annual tax performance reports for certain tax preferences.

(2) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **"Airplane maintenance repair station"** has the same meaning as "repair station" adopted by the National Air Transportation Association and is a maintenance facility that has a certificate issued by the Federal Aviation Administration under Title 14 of the Code of Federal Regulations (14 C.F.R.) Part 145 that is engaged in the maintenance, preventive maintenance, inspection, alteration of airplanes, and alteration of airplane products.

(b) **"Commercial airplane,"** as defined in RCW 82.32.550(1), is an airplane certified by the Federal Aviation Administration for transporting persons or property, and any military derivative of such an airplane.

(c) **"Component,"** as defined in RCW 82.32.550(2), means a part or system certified by the Federal Aviation Administration for installation or assembly into a commercial airplane.

(d) **"Eligible maintenance repair operator"** means a person classified by the Federal Aviation Administration as qualified to operate a Federal Aviation Regulation Part 145 certified repair station that is located in ~~((an international))~~ a commercial services airport owned by a county with a population ~~((greater than 1,500,000))~~ less than 1,000,000 or a commercial services airport jointly owned by a city and county.

(e) **"Operationally complete"** means constructed to the point of being functionally capable of hosting the repair and maintenance of airplanes.

(3) **Retail sales or use tax exemption.**

(a) Subject to the requirements of RCW 82.08.025661 and this rule, state and local retail sales and use taxes do not apply to the items and services as described in (b) of this subsection that are charged or sold to, or purchased or used by:

(i) An eligible maintenance repair operator engaged in the maintenance of airplanes; or

(ii) A port district, political subdivision, or municipal corporation, if the new airplane maintenance repair station is to be leased to an eligible maintenance repair operator engaged in the maintenance of airplanes.

(b) The exempt items and services include:

(i) Labor and services to construct a new airplane maintenance repair station;

(ii) Tangible personal property that will be incorporated as an ingredient or component during the course of constructing the new airplane maintenance repair station; and

(iii) Labor and services to install, during the course of constructing the new airplane maintenance repair station, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565.

(c) To qualify for the exemption described in this rule, the port district, political subdivision, or municipal corporation must have first entered into an agreement with an eligible maintenance repair operator to build the new facility, prior to starting construction of the new facility.

(4) **Remittance application.** The exemption described in this rule is a remittance.

(a) A business claiming the state and local retail sales or use tax exemption must first pay all applicable state and local retail sales or use taxes on all purchases qualifying for the exemption under subsection (3)(b) of this rule.

(b) The business may then file a quarterly remittance application with the department for the previously paid retail sales or use tax that is determined by the department to qualify for the exemption. The remittance form may be sent electronically to the department or to the mailing address found in (b)(ii) of this subsection.

(i) The remittance application must specify and separately identify the amount of the exempted state and local retail sales and use taxes claimed and the qualifying purchases or acquisitions for which the exemption is claimed, along with any supporting documents required by the department. Refer to the department's website at (~~https://www.~~)dor.wa.gov for documentation requirements.

(ii) The application for remittance is titled "Application for Refund or Credit" and is available on the department's website at (~~https://www.~~)dor.wa.gov. You may also contact the telephone information center at 360-705-6705 or write to the following address:

Attn: New Construction for FAR Part 145
Repair Station Refunds
Taxpayer Account Administration Division
Department of Revenue
P.O. Box 47476
Olympia, WA 98504-7476

(c) Local retail sales and use taxes that qualify for this exemption are eligible for remittance (~~beginning on the exemption's effective date of July 1, 2016~~) the first quarter after construction commences.

(d) State retail sales and use taxes that qualify for this exemption are eligible for remittance the later of either:

(i) The date on which the airplane maintenance and repair station has been operationally complete for four years; or

(ii) December 1, 2021.

(e) The business must provide written notice to the department when the maintenance and repair station is operationally complete as defined in subsection (2)(e) of this rule. The notice should be sent electronically to the department or to the mailing address found in (b)(ii) of this subsection.

(f) The state and local retail sales and use taxes described in this rule are not eligible for remittance on purchases of items or services under subsection (3)(b) of this rule that occur on or after the exemption's expiration date of January 1, (~~2027~~) 2031.

(5) **Department must determine eligibility.**

(a) The department must determine eligibility for the exemption based on information provided by the business and through audit and other administrative records.

(b) The business must retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this rule, construction invoices and documents including, but not limited to, invoices, proof of tax paid, and documents describing the location and size of new structures.

(c) By the end of the calendar quarter that follows the quarter in which the refund application was submitted, the department will remit qualified exempted amounts to a qualifying business, in accordance with subsection (4)(c) and (d) of this rule, for local and state retail sales and use taxes.

(d) The department may not remit the state portion of the retail sales and use taxes paid if the business did not report at least 100 average employment positions with an average annualized wage of \$80,000 to the employment security department for ((October 1, 2020, through September 30, 2021, with an average annualized wage of \$80,000)) four consecutive calendar quarters, beginning with the first calendar quarter after the date the facility is issued an occupancy permit by the local permit issuing authority. The business must provide the department with the unemployment insurance number provided to the employment security department for verification of employment ((levels)) requirements.

If a new airplane maintenance repair station owned by a port district, political subdivision, or municipal corporation is leased to an eligible maintenance repair operator engaged in the maintenance of airplanes, only the business lessee, and not the lessor, must meet the employment requirement described in (d) of this subsection.

(6) **Annual tax performance report.** An eligible maintenance repair operator receiving a remittance under this rule must electronically file an annual report with the department in accordance with RCW 82.32.534. For more information about filing an annual report, see WAC 458-20-267 and visit the department's website at ((https://www.dor.wa.gov or contact the telephone information center at 360-705-6705.