

TaxFacts

2007 Legislative Tax Changes

The 2007 Legislature made several changes to taxes and programs administered by the Department of Revenue. This publication provides a brief summary of some of the bills affecting excise taxes. For more information, please refer to the bill at <http://apps.leg.wa.gov/billinfo/>.

* Indicates Special Notice will be issued.

Business and Occupation (B&O), Sales, and Use Taxes

* **Vessels purchased by nonresident individuals – SHB 1002** (chapter 22, Laws of 2007) authorizes a sales/use tax exemption for the purchase or use of vessels 30 feet or longer by nonresident individuals. To use the exemption, nonresident individuals must purchase a use permit from a licensed vessel dealer. The use permit is valid for 12 consecutive months after issuance. This exemption may not be renewed and cannot be used consecutively with any other use tax exemption. *Effective July 1, 2007.*

* **Natural and manufactured gas sales – SHB 1508** (chapter 58, Laws of 2007) provides a B&O tax exemption for certain sales made in the United States of natural or manufactured gas. *Effective July 22, 2007.*

* **Reduced B&O tax rates for timber activities – SHB 1513** (chapter 48, Laws of 2007) provides a reduced B&O tax rate for timber extracting or timber extracting for hire; manufacturing or processing for hire timber into timber products or wood products; manufacturing or processing for hire timber products into other timber products or wood products; wholesale sales of timber extracted by the seller; and wholesale sales of timber products or wood products manufactured by the seller from timber or other timber products. The bill clarifies who qualifies for the new rate and that certain sales of standing timber now qualify for the new rate, rather than being subject to real estate excise tax. Partially offsetting the rate reduction is a new surcharge. *Effective July 1, 2007.*

Wholesale sales of unprocessed milk - HB 1549 (chapter 131, Laws of 2007) grants a B&O tax exemption to wholesale sales of unprocessed milk. *Effective July 22, 2007.*

* **Drugs injected by licensed physicians or clinics - SHB 1891** (Chapter 447, Laws of 2007) provides a B&O tax deduction for amounts received for drugs for infusion or injection by licensed physicians or their agents pursuant to a prescription. The deduction is limited to the amounts for which the federal government will reimburse providers. In addition, the amounts must be separately stated on billing statements and must be covered, or required, under a health care service program subsidized by the federal or state government. *Effective October 1, 2007.*

* **Farm machinery and replacement parts – EHB 1902** (chapter 332, Laws of 2007) expands current sales/use tax exemptions for replacement parts to include labor and services with respect to installing qualifying replacement parts for eligible farmers on qualifying farm machinery and equipment.

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To qualify for the exemption, the definition of an eligible farmer is expanded to include a farmer that generally has at least \$10,000 of gross sales or harvested value of agricultural products. Additional changes were made to the definitions of “qualifying farm machinery and equipment” and “replacement parts.” Persons must still apply to the Department for an exemption certificate. *Effective July 22, 2007.*

*** Sales of digital goods - ESHB 1981** (chapter 182, Laws of 2007) creates a sales/use tax exemption for standard financial information, delivered electronically, to financial institutions and investment advisers registered under the Investment Advisers Act of 1940. *Effective August 1, 2007.*

*** Vehicles purchased by nonresidents – SHB 2158** (chapter 135, Laws of 2007) clarifies the documentation needed to exempt vehicle purchases by nonresidents from sales tax. In addition, the bill clarifies that sales tax does not apply to parts installed on motor vehicles of certain nonresidents when repaired in Washington. Charges for parts must be separately stated and the nonresident must be from a state, or province of Canada, that has a sales tax rate of 3% or less. *Effective July 22, 2007.*

*** Custom farming / farming services – ESHB 2352** (chapter 334, Laws of 2007) grants a B&O tax exemption for certain persons performing custom farming services for farmers. Additionally, the bill provides a B&O exemption for persons providing certain farming-related services to farmers, and a public utility tax exemption for persons that haul agricultural products or farm machinery or equipment for farmers, when the person providing the service and the farmer are related. *Effective August 1, 2007.*

*** Farm fuel users – SSB 5009** (chapter 443, Laws of 2007) extends to biodiesel fuel the sales/use tax exemptions for farm fuel used for producing agricultural products by farmers and persons providing horticultural services for farmers (“farm fuel users”). *Effective May 11, 2007.*

*** Conforming Washington’s tax structure to the Streamlined Sales and Use Tax Agreement (SSUTA) - SSB 5089** (chapter 6, Laws of 2007) the bill provides:

- **Monetary allowances and vendor compensation:** Allows the Department of Revenue to provide monetary allowances by rule for voluntarily registered sellers who use certified service providers, tax compliance software, or another means of collecting and remitting tax that is authorized under the SSUTA.

- **Amnesty:** Provides amnesty from assessments for past “uncollected” sales/use taxes against an unregistered seller who has not already been contacted by the Department of Revenue who, no later than 12 months after the effective date of the state’s membership in the SSUTA, registers under the Agreement and then collects and remits sales/use taxes to the state for a period of at least 36 months.
- **Sourcing:** Changes the sales/use tax sourcing rules to a destination based system.
- **Confidentiality:** Provides protections with respect to confidentiality and privacy for businesses that use certified service providers under the SSUTA.
- **Taxability matrix:** Requires DOR to complete a taxability matrix to ensure uniform application of terms in the SSUTA.
- **Definitions:** Modifies definitions for “delivery charges” and “bundled transactions” and changes terminology related to telecommunications.
- **Administration:** Allows sellers to authorize or designate an agent to register the seller with the state. Includes provisions for a mitigation account to assist local jurisdictions affected by the sourcing change and provides relief for small retailers (defined as having less than \$500,000 in gross income and at least 1 percent of their income derived from deliveries outside their home location).

Effective July 1, 2008

Public District Authority tax exemptions – SB 5572 (chapter 381, Laws of 2007) provides exemptions from B&O and sales/use taxes for public corporations, commissions or authorities created under RCW 35.21.660 or 35.21.730. The exemption applies to sales of tangible property and services made to other public limited liability corporations or partnerships and to single asset entities required under federal, state, or local governmental housing assistance programs that are controlled by a public corporation, commission or authority. *Effective July 22, 2007.*

Passenger-only ferry service fuel – E2SSB 5862 (chapter 223, Laws of 2007) grants a sales/use tax exemption on purchases of motor vehicle fuel and special fuel by a public transportation benefit area (PTBA) created under chapter 36.57A RCW or a county-owned ferry or county ferry district created under chapter 36.54 RCW for use in passenger-only ferry vessels. *Effective April 27, 2007.*

Tax Incentive Programs

* **Biofuel sellers – SHB 1029** (chapter 309, Laws of 2007) extends the expiration date from July 1, 2009 to July 1, 2015 on tax incentives for persons who distribute and/or make retail sales of biodiesel fuel and E85 motor fuel. The term “E85 motor fuel” replaces “alcohol fuel”. *Effective July 22, 2007.*

* **Rural county B&O tax credit for new employees – SHB 1566** (chapter 485, Laws of 2007) revises the rural county B&O tax credit for hiring new employees under RCW 82.62. *Effective January 1, 2008.*

* **Application for sales/use tax deferral under RCW 82.74 – HB 2032** (chapter 243, Laws of 2007) permits businesses to submit an application for the sales/use tax deferral program under RCW 82.74 prior to July 1, 2007. Only the date the Department can start receiving applications has changed. Sales or use tax is due on construction performed or purchases made prior to July 1, 2007. Purchases made by qualifying businesses after July 1, 2007 are deferred. *Effective April 30, 2007.*

Other Legislation

Reporting timber purchases – HB 1185 (chapter 47, Laws of 2007) changes reporting requirements for purchases of privately owned timber in excess of two hundred thousand board feet. The purchaser must report: purchaser's name and address, sale date, termination date in sale agreement, total sales price, total acreage purchased, net volume of timber, legal description, road construction or other improvements required, timber cruise data, and timber thinning data. This information must be reported to the Department of Revenue prior to the last day of the month following the sale. Failure to report may result in a penalty of up to \$250. *Effective July 1, 2007.*

***Public utility tax deduction for grain hauling - HB 1443** (chapter 330, Laws of 2007) creates a deduction from public utility tax for transportation to interim storage of agricultural commodities that are being exported out-of-state. Persons claiming this deduction must obtain a certificate from the agricultural commodity dealer operating the interim storage facility indicating certain conditions are met. *Effective July 22, 2007.*

***Amateur radio repeaters – SHB 2335** (chapter 21, Laws of 2007) grants a leasehold excise tax exemption on leasehold interests in property for repeaters used by licensed amateur radio operators, so long as the repeaters are available for use by public agencies in the event of an emergency. *Effective July 22, 2007.*

Tax on tobacco products – SB 5551 (chapter 221, Laws of 2007) establishes a credit for the sale of tobacco products when tobacco products are sold by a distributor to the United States or any of its agencies or instrumentalities, or by a distributor to an Indian tribal organization. The bill provides definitions used to determine if a sale to a particular organization qualifies for a credit. In addition, the bill exempts compensation allowed for affixing cigarette tax stamps from B&O tax. *Effective July 22, 2007.*

Changes in 2007 resulting from 2006 legislation

Sales/use tax deferral on construction of food processing facilities and storage

Certain changes made to Chapter 82.74 RCW by 2006 legislation (Laws of 2006, chapter 354, sections 6 through 9 and 11) becomes effective July 1, 2007. The deferral program grants sales/use tax deferrals on construction or expansion of facilities used in fresh fruit and vegetable processing, dairy product manufacturing, seafood product manufacturing, cold storage warehouse, and research and development activities. The deferral program also applies to purchases of qualified machinery and equipment.

Surcharge on timber activities

Businesses reporting under the reduced B&O tax rate for certain timber activities provided in 2006 legislation (Laws of 2006, chapter 300, section 2) are also subject to a surcharge of 0.00052, effective July 1, 2007. The surcharge funds activities for improving and protecting banks of a natural course of water on non-federal Washington forest lands.

When surcharge receipts reach \$8 million during a biennium, the surcharge will be suspended. The surcharge is also subject to suspension or adjustment depending on amounts appropriated by the federal government to support tribal participation.

Nursing facility bed tax repealed

The quality maintenance fee imposed on certain nursing facilities will be repealed effective July 1, 2007, per 2006 legislation (Laws of 2006, chapter 241, section 1). The repeal does not affect or extinguish any existing liabilities or obligations for taxes due prior to July 1, 2007.

Rule Making

Following are the Department of Revenue's recent tax rule adoptions and repeals. For specific information on the rule changes, to obtain a copy of a newly adopted rule, or for more information regarding how these rules may affect you, go to <http://dor.wa.gov> and click on Find a law or rule, then one of the choices under "Rule making." You may also call the Telephone Information Center at 1-800-647-7706.

Excise tax rule (WAC) adopted or amended:

- 458-20-101 Tax registration and tax reporting. Effective February 8, 2007.
- 458-20-131 Gambling activities. Effective January 29, 2007.
- 458-20-167 Educational institutions, school districts, student organizations, and private schools. Effective May 28, 2007.
- 458-20-185 Tax on tobacco products. Effective March 10, 2007.
- 458-20-186 Tax on cigarettes. Effective March 10, 2007.
- 458-20-228 Returns, payments, penalties, extensions, interest, stay of collection. Effective April 6, 2007.
- 458-20-22802 Electronic funds transfer. Effective December 10, 2006.
- 458-20-244 Food and food ingredients. Effective June 14, 2007.
- 458-20-254 Recordkeeping. Effective March 9, 2007.
- 458-20-255 Carbonated beverage syrup tax. Effective December 10, 2006.
- 458-20-268 Annual surveys for certain tax adjustments. Effective January 29, 2007.

Property tax rule (WAC) adopted or amended:

- 458-12-005 Definition – Property – Personal. Effective December 31, 2006.
- 458-16-115 Personal property exemptions for household goods, furnishings, and personal effects, and for the head of a family. Emergency rule effective February 26, 2007.
- 458-18-060 Deferral of special assessments and/or property taxes – Limitations of deferral – Interest. Emergency rule effective April 3, 2007.
- 458-30-262 Agricultural land valuation – Interest rate – Property tax component. Effective January 1, 2007.
- 458-30-590 Rate of inflation – Publication – Interest rate – Calculation. Effective January 1, 2007.

- 458-50-150 Intangible personal property exemption – Introduction. Effective December 31, 2006.
- 458-50-160 Exempt intangible property distinguished from other intangibles. Effective December 31, 2006.
- 458-50-170 Valuation principles. Effective December 31, 2006.
- 458-50-180 Appraisal practices relating to valuing intangible personal property. Effective December 31, 2006.
- 458-50-190 Valuation of particular assets. Effective December 31, 2006.

Forest tax rule (WAC) adopted or amended:

- 458-40-540 Forest land values – 2007. Effective January 1, 2007.
- 458-40-660 Timber excise tax – Stumpage value tables – Stumpage value adjustments. Effective January 1, 2007.

Changes to interpretive/policy statements

The Department issues interpretive and policy statements, such as Excise Tax Advisories and Property Tax Advisories, to explain how tax applies to a specific set of facts or to address specific issues. These statements are issued or cancelled periodically based primarily on changes in the tax law. Statements that are cancelled can no longer be relied upon for tax application.

Excise tax advisories (ETAs) adopted:

- 2012-08.12.13601 Manufacturers' machinery and equipment exemption. First revision effective November 8, 2006.
- 2012-105.08.12.13601 Manufacturers' machinery and equipment exemption – Research and development. Effective November 8, 2006.
- 2016.04.111 Staffing companies. Third revision effective May 22, 2007.
- 2035.04.136 Processing perishable meat products. Effective March 16, 2007.
- 2036.29A Computing leasehold excise tax at public marinas. Effective November 28, 2006.
- 2037.32.228 Substantial underpayment penalty. Effective November 8, 2006.
- 2038.08.17001 Sales to the Washington State National Guard. Effective April 12, 2007.

Excise tax advisories (ETAs) cancelled:

* Cancelled effective February 28, 2007

** Cancelled effective December 29, 2006

17.04.170	Labor and services of a subcontractor.*
21.12.134	Value of materials used by producer in performance of public road contract.**
27.04.194	Testing and engineering services by out-of-state corporation.**
46.04.170	Joint venture agreement; a prime contract or a subcontract.*
58.04.214	Marketing associations: Seller or agent.**
82.04.105	Contractor distinguished from an employee.*
84.08.190	Capehart construction contracts.*
98.12.134	Overhead costs in computing value on a cost basis.**
131.04.170	Construction company as agent for owner.*
141.04.109	Finance reserve credits and gross income of the business.*
163.04.08.107/247/250	Core deposits and credits – parts returned to wholesalers.*
208.04.173	Sales of abrasives and masking tape for use in the performance of an automobile contract.**
210.08.187	Coin operated ski waxing and bowling ball polishing machines.**
213.04.173	Distinction between “manufacturing” and “altering” activities.**
216.08.113	Chemicals and other articles used in purifying water.*
238.08.12.130	Buildings sold exclusive of the land upon which they are situated.**
286.04.193	Freight forwarders.**
318.04.106/211	Sales and/or trade-ins of tangible personal property from rental inventory.**
345.16.180	Agricultural commodities hauling classified within motor transportation business.*
347.16.180	Federal government contractors hauling out-of-state goods.*
415.12.178	Use tax on private automobiles acquired while a nonresident.**
486.04.172	Moving a structure (bridge) as a retail sale.*
488.04.172/105	Conditions under which a contractor-owner relationship exists.*

489.04.170	Lessee as speculative builder.**
490.04.170/111	Interest on construction loan taxable as part of contract price.*
569.61.411/412	REET – Documentation of transfers by inheritance – Documentation of transfers from trusts.**
570.61.080	REET – Dual signature – Utility rights-of-way or easements – Counties.**



2007 Biz Fair

Mark Your Calendar

The 2007 Washington Small Business Fair (Biz Fair) will be held on Saturday, September 8 from 8:00 a.m. to 3:30 p.m.

Biz Fair is the largest business fair in Washington. It is the place to go to receive practical information on how to start or expand a small business. A variety of experts will conduct seminars and provide information on topics ranging from taxes to business planning and marketing to web sites. The Department of Revenue will host a business tax overview and our representative will be available throughout the day to answer your specific questions. The fair will be held at:

**Renton Technical College
3000 NE 4th Street
Renton, Washington**

For a list of exhibitors, seminar topics, and directions to the fair, visit Biz Fair online at: **www.bizfair.org**.

Foreign Diplomat Sales Tax Exemption

Federal law provides diplomats (officials or missions) from foreign countries to make sales tax exempt purchases of goods as well as retail services, such as restaurant meals or hotel stays, provided they possess a tax exemption card issued by the US Department of State, Office of Foreign Missions. The tax exemption cards are provided to missions and diplomats whose home countries offer a similar exemption to US diplomats.

There are two types of cards, providing different levels of exemption:

- The **Mission Tax Exemption Card** is issued to an individual authorized to make purchases on behalf of the mission. The bill or invoice must be made out to the mission and payment can be made only by mission credit card or check, as US Department of State rules don't allow cash payments.
- The **Personal Tax Exemption Card** is issued to individuals associated with the mission who are authorized to receive the exemption for personal purchases. Only the person pictured on the front of the card may make tax-free purchases.

Persons making exempt purchases of goods or retail services must present one of the cards at the time of purchase. The exemption applies to state and local taxes, including local tax components such as the special hotel/motel tax, convention and trade center, King County food and beverage, and Regional Transit Authority (RTA) taxes.

The tax exemption cards have a colored stripe that identifies the types of purchases that qualify for tax exemption.

Purchase Restrictions for Tax Exemption Cards

Stripe	Color Restriction
Blue	Exemption applies to all purchases including lodging, meals, and car rentals.
Yellow	Exemption applies to all purchases except restricted categories identified on the card.

For additional information on tax exemptions provided to foreign diplomats, and for specific information on vehicle purchases under the program, see our Special Notice "Foreign Diplomats Tax Exemption Program," available at <http://dor.wa.gov>.

Prepared Food Changes

New guidelines adopted in accordance with the Streamlined Sales and Use Tax Agreement now require certain retailers to collect retail sales tax on all sales of food and food ingredients. Affected retailers would need to charge and collect retail sales tax on foods that are otherwise exempt, such as fruit, bottles of milk or juice, bakery items, water, and candy.

Affected retailers are only those who make utensils generally available to customers and who also have prepared foods sales in excess of seventy-five percent (75%) of their total food and food ingredient sales.

Retailers must use a specific formula to calculate total sales of prepared foods.

The specific formula and the new guidelines are available in a special notice entitled 'Prepared Food' Tax Changes (revised May 7, 2007). The formula and guidelines are also published in the revised rule WAC 458-20-244 (effective in June 2007). The special notice, revised rule, and additional information are available at <http://dor.wa.gov>.

The new guidelines take the place of previously published guidance in this area.

The new guidelines are based on the definition of "prepared foods" established by the Streamlined Sales and Use Tax Agreement Compliance Review and Interpretations Committee. Retailers should comply with the new guidelines as soon as possible, and must comply no later than **January 1, 2008**.

Additional assistance is available by calling the Telephone Information Center at 1-800-647-7706.

Department of Revenue to Help Retailers Shift to New Sales Tax Collection Rules

If you're a Washington retailer, and you deliver or ship products to customers within the state, you'll need to change how you collect sales tax starting July 1, 2008.

Under current law, retail sales tax is collected based on the location from which merchandise is shipped or delivered. Under the new law, Washington retailers delivering or shipping goods to customers in Washington must start collecting sales tax based on the location where the customer receives the merchandise – the “destination” of the sale.

Why the change?

Washington businesses that collect sales tax are losing sales to out-of-state retailers that don't charge sales tax. These retailers have a competitive advantage over traditional brick-and-mortar businesses located in Washington. The brick-and-mortar businesses often serve as showrooms for online and mail order sellers. People may look at big ticket items in a local store, but order elsewhere to avoid paying sales tax.

A national effort, known as the Streamlined Sales and Use Tax Agreement, standardizes the way each state taxes goods so it's easier for online and mail order retailers to collect sales tax.

In order to join this national effort, Washington needed to change its method for collecting local sales tax.

Sales not affected

This change **does not** affect:

- Deliveries or shipments outside the state; Washington sales tax is not charged on those sales.
- The rate charged on deliveries and shipments within a taxing jurisdiction, such as deliveries within the same city or county.
- Sales when customers take possession at the selling location.
- Sales of motor vehicles, trailers, semi-trailers, aircraft, watercraft, modular homes, and manufactured and mobile homes.

Help is coming

The Department is working directly with businesses affected by this change to develop the information and tools that will ease the transition to destination sourcing. These include comprehensive web resources, informational mailings, workshops, and business forums. We plan to partner closely with business associations, chambers of commerce, and rotary clubs throughout the state.

In addition, certain small retailers are eligible for up to \$1,000 in tax credits (to offset any necessary changes to their accounting, point-of-sale, or other systems) or two years of assistance from a certified service provider – a third party that handles the coding and files sales tax returns for businesses. Eligible businesses can claim these benefits after July 1, 2008.

Retailers are eligible if they:

- Gross less than \$500,000 annually
- Receive at least five percent of their taxable sales income from deliveries
- Receive at least one percent of their taxable sales income from deliveries outside the jurisdiction where they collect the most sales tax

For more information, visit <http://dor.wa.gov>.

Supreme Court Decision on Itemizing the B&O Tax

In *Nelson v. Appleway Chevrolet*, the Washington State Supreme Court held that an auto dealer may not add a B&O tax charge after the dealer and the customer have reached a final purchase price. However, an auto dealer may disclose the B&O tax charge while negotiating the final purchase price and itemize the B&O tax charge as part of the final purchase price. The Supreme Court also held that a dispute over an improperly itemized B&O tax charge is a matter between the auto dealer and its customer.

If you believe you have been improperly charged B&O tax by an auto dealer and wish to pursue the matter, you should consider taking one or more of the following steps:

- Contact the attorneys for the class action, if you are part of the class.
- Request a refund from the dealership, if you are not part of the class action.
- Contact the Attorney General's Consumer Protection Division at 1.800.551.4636.

Taxpayer Services Division

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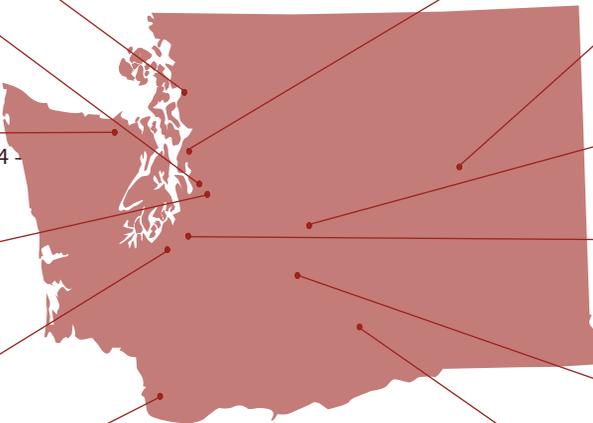
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