



# RULE-MAKING ORDER

**CR-103P (May 2009)**  
**(Implements RCW 34.05.360)**

**Agency:** Department of Revenue

**Permanent Rule Only**

**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:** WAC 458-20-176 (Rule 176) explains the business and occupation (B&O) tax, sales tax and use tax responsibilities of those engaged in commercial deep sea fishing and suppliers selling to those persons. Rule 176 has been revised to:

- Include information pertaining to RCW 82.04.4269 that allows a B&O tax exemption for value of product or proceeds of sales for manufactured seafood products that remain in a raw, raw frozen or raw salted state at the completion of the manufacturing by that person or when the same is sold to buyers that transport the seafood products out of the state of Washington. This exemption, not previously discussed in the rule, has been extended to July 1, 2025. Chapter 6, 2015 Laws 3<sup>rd</sup> Special Session (ESSB 6057).
- Add an introduction and references to other rules that may be helpful to readers.
- Remove verbiage pertaining to and the example of the “Diesel Fuel Exemption Certificate” as no longer needed. Qualified buyers should use the Buyers’ Retail Sales Tax Exemption Certificate found on the Department’s website.

**Citation of existing rules affected by this order:**

Repealed:

Amended: WAC 458-20-176 (Rule 176) Commercial deep sea fishing - Commercial passenger fishing – Diesel Fuel.

Suspended:

**Statutory authority for adoption:** RCW 82.32.300 and 82.01.060(2)

**Other authority :** RCW 82.04.4269

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as **WSR 15-21-012** on **October 12, 2015**.

Describe any changes other than editing from proposed to adopted version: **None**.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available.  
**An analysis was not prepared.**

**Date adopted:**

January 4, 2016

**NAME**

Kevin Dixon

**SIGNATURE**

**TITLE**

Rules Coordinator

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: January 04, 2016**

**TIME: 9:36 AM**

**WSR 16-02-059**

**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:**

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	New	Amended		Repealed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	New	Amended		Repealed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	New	Amended	1	Repealed

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

	New	Amended		Repealed
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**The number of sections adopted in the agency's own initiative:**

	New	Amended	1	Repealed
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

	New	Amended		Repealed
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	Amended		Repealed
<b>Pilot rule making:</b>	New	Amended		Repealed
<b>Other alternative rule making:</b>	New	Amended	1	Repealed

AMENDATORY SECTION (Amending WSR 88-03-055, filed 1/19/88)

**WAC 458-20-176 Commercial deep sea fishing—Commercial passenger fishing—Diesel fuel.** (1) **Introduction.** This rule explains the business and occupation (B&O) tax, sales tax and use tax responsibilities of those engaged in commercial deep sea fishing, and suppliers selling to those persons.

Other rules that may apply. Readers may want to refer to other rules for additional information, including those in the following list:

(a) WAC 458-20-119 Sales by caterers and food service contractors;

(b) WAC 458-20-135 Extracting natural products;

(c) WAC 458-20-178 Use tax and the use of tangible personal property;

(d) WAC 458-20-193 Interstate sales of tangible personal property;

(e) WAC 458-20-244 Food and food ingredients.

(2) **Definitions.** ~~((As used herein:))~~ The following definitions apply to this rule.

(a) **Commercial deep sea fishing.** "Commercial deep sea fishing" means fishing done for profit outside the territorial waters of the state of Washington. It does not include sport fishing or the operation of charter boats for sport fishing. ~~((See WAC 458-20-183 for tax liability of such persons.))~~ Nor does the phrase include the operation or purchase of watercraft for kelping, purse seining, or gill netting, because such fishing methods can be legally performed in Washington only within the territorial waters of the state (the three-mile limit). Therefore, watercraft rigged for fishing by any of these methods will be deemed for use in other than commercial deep sea fishing unless proof, including documentation to be retained by sellers, is furnished that said watercraft will be used for these purposes exclusively outside the Washington territorial limit.

(b) ~~(("Watercraft" means every type of floating equipment which is designed for the purpose of carrying therein or therewith fishing gear, fish catch or fishing crews, and used primarily in commercial deep sea fishing operations.))~~ **Commercial passenger fishing.** "Commercial passenger fishing" means that done from charter boats for sport outside the territorial waters of the state of Washington.

(c) **Component part.** "Component part" includes all tangible personal property ~~((which))~~ that is attached to and a part of a watercraft. It includes dories, gurdies and accessories, bait tanks, baiting tables and turntables. It also includes spare parts ~~((which))~~ that are designed for ultimate attachment to a watercraft. The ~~((said))~~ term "component part" does not include equipment or furnishings of any kind ~~((which))~~ that are not attached to a watercraft, nor does it include consumable supplies. Thus, it does not include, among other things, bedding, table and kitchen wares, fishing nets, hooks, lines, floats, hand tools, ice, fuel or lubricants.

(d) ~~(("Commercial passenger fishing" means that done from charter boats for sport outside the territorial waters of the state of Washington.~~

~~(2))~~ **Watercraft.** "Watercraft" means every type of floating equipment that is designed for carrying fishing gear, fish catch or

fishing crews, and used primarily in commercial deep sea fishing operations.

**(3) Business and occupation tax.**

(a) Persons engaged in commercial deep sea fishing are not taxable under the extracting classification with respect to catches obtained outside the territorial waters of this state.

(b) Such persons are taxable under either the retailing or the wholesaling classification with respect to sales made within this state, unless entitled to exemption by reason of the commerce clauses of the federal constitution. ~~((See WAC 458-20-193.))~~

~~(3))~~ (c) Such persons may qualify for a B&O tax exemption under RCW 82.04.4269. This exemption pertains to the value of products or the gross proceeds of sales derived from:

(i) Manufacturing seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or

(ii) In the ordinary course of business, manufactured seafood products that remain in a raw, raw frozen or raw salted state to buyers that transport the goods out of the state of Washington. A person taking an exemption must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the buyer in the ordinary course of business out of the state of Washington.

(d) Persons claiming the exemption in (c) of this subsection must file a completed annual survey with the department under RCW 82.32.585. In addition, persons claiming this tax preference must report the amount of the exemption on their monthly or quarterly excise tax return. For more information on reporting requirements for this tax preference see RCW 82.32.808.

(e) The exemption provided by RCW 82.04.4269 is scheduled to expire on July 1, 2025.

**(4) Retail sales tax.**

(a) ~~((By reason of the exemption contained in))~~ Under RCW 82.08.0262, the retail sales tax does not apply ~~((upon))~~ to sales of watercraft (including component parts thereof) which are primarily for use in conducting commercial deep sea fishing operations, nor does ~~((said))~~ retail sales tax apply to sales of or charges made for labor and services rendered in respect to the constructing, repairing, cleaning, altering or improving of such property.

(b) The retail sales tax applies ~~((upon))~~ to sales made to persons engaged in commercial deep sea fishing of every ~~((other))~~ type of tangible personal property (except only sales of watercraft and component parts thereof) and ~~((upon))~~ to sales of or charges made for labor and services rendered in respect to the construction, repairing, cleaning, altering or improving of such ~~((other))~~ types of property. Thus, the retail sales tax applies ~~((upon))~~ to sales to such persons of such things as fishing nets, hooks, lines, floats and bait; table and kitchen wares; hand tools, ice, fuel except diesel fuel as noted ~~((below))~~ in subsection (7) of this rule, and lubricants for use or consumption ~~((, except only sales of watercraft and component parts thereof)).~~ For sales of food ~~((products))~~ and food ingredients see WAC 458-20-119 and 458-20-244.

~~((4))~~ **(5) Exemption certificates required.**

(a) Persons selling watercraft or component parts thereof to persons engaged in commercial deep sea fishing or performing services with respect to such craft or parts, are required to obtain from the ~~((purchaser))~~ buyer a certificate evidencing the exempt nature of the

transaction. (~~This certificate must identify the purchaser by name and address, and by name of the watercraft with respect to which the purchase is made, and must contain a statement to the effect that the property purchased or repaired is for use primarily in commercial deep sea fishing operations.~~)

(b) ~~The certificate should be in substantially the following form:~~

**Exemption Certificate**

~~I HEREBY CERTIFY that the . . . . .  
this day ordered from or purchased from  
you, will be used primarily in commercial  
deep sea fishing operations outside the  
territorial waters of the State of Washing-  
ton; that the vessel is not for fishing in-  
side such territorial waters, and is not  
rigged or equipped for such fishing; that  
the registered name of the watercraft to  
which said purchase applies is           (name of  
fishing boat)          ; and that said sale is en-  
titled to exemption under the provisions of  
RCW 82.08.0262.~~

~~Dated . . . . ., 19 . . . . .~~

~~.....  
(Name of Purchaser)~~

~~By.....  
(Name of officer or agent)~~

~~Address.....))~~

(b) Buyers claiming the exemption may use the department's Buyers' Retail Sales Tax Exemption Certificate. The certificate can be found on the department's web site at dor.wa.gov. Sellers must retain certificates in its records as evidence of the exempt nature of the sales to eligible buyers.

(c) ((Incidental use)) Fishing boats used primarily in commercial deep sea fishing operations that are incidentally used within the waters of this state ((of fishing boats which are used primarily in deep sea fishing operations, will not deprive the owners thereof of the statutory exemption from the)) are still eligible for the exemption from retail sales tax.

(d) ((In the event the)) Sales of fishing ((boat with respect to which an exemption is claimed is of a)) boats, that are the types used in the waters of Puget Sound or the Columbia River and the tributaries thereof, and ((is)) are not practical for use in deep sea fishing, ((sellers should collect)) are subject to the retail sales tax ((upon all sales of such boats and)) including sales of component parts thereof and ((upon)) on charges made for the repair of the same.

(e) It is a gross misdemeanor for a buyer to make a false certificate of exemption for the purpose of avoiding the tax.

~~((+5))~~ (6) Use tax.

(a) The use tax does not apply ~~((upon))~~ to the use of watercraft or component parts thereof. RCW 82.12.0254.

(b) The use tax ~~((does apply upon))~~ applies to the actual use within this state of all other types of tangible personal property purchased at retail ~~((and upon which))~~ where the sales tax has not been paid ~~((see WAC 458-20-178) except on diesel fuel as noted below))~~ and no exemption exists.

~~((+6))~~ (7) Diesel fuel.

(a) ~~((The law provides for))~~ RCW 82.08.0298 and 82.12.0298 provide sales and use tax exemptions on diesel fuel for both commercial passenger fishing (charter boats for sport fishing) and commercial deep sea fishing operations.

(b) Neither retail sales nor use tax applies with respect to sales or use of diesel fuel in the operation of watercraft in commercial deep sea fishing operations or commercial passenger fishing operations by persons who are regularly engaged in the business of such operations outside the territorial waters (three-mile limit) of this state. For purposes of this exemption, a person is not regularly engaged in either business if the person has gross receipts from the extra territorial operations of less than five thousand dollars a year. For persons involved in both commercial deep sea fishing operations and commercial passenger fishing operations, the receipts from both ~~((shall))~~ will be added together to determine eligibility for this exemption.

(c) ~~((This exemption is plenary in scope and it is not required that all of the diesel fuel purchased be used outside of the territorial waters of this state.))~~ If a person qualifies for the exemptions by virtue of operating a deep sea fishing vessel, and has the requisite amount of gross receipts from that activity, all diesel fuel purchases and uses by such person for such vessel are tax exempt. It is not required that all the diesel fuel purchased be used outside the territorial waters of this state.

(d) **Diesel fuel exemption certificates required.** Persons selling diesel fuel to such persons are required to obtain from the ~~((purchaser))~~ buyer a certificate evidencing the exempt nature of the transaction. This certificate must identify the ~~((purchaser))~~ buyer by name and address, and by the registered name and number of the watercraft with respect to which the purchase is made. ~~((It must contain a statement to the effect that the diesel fuel is for use by a person who is engaged in commercial deep sea fishing and/or commercial passenger fishing operations who has annual gross receipts therefrom of at least five thousand dollars.))~~ Blanket certificates covering all diesel fuel purchases for specified watercraft may be used, where appropriate. A seller of diesel fuel who accepts such a certificate ~~((in good faith shall not be))~~ is not liable for sales tax on the diesel fuel sold. Certificates must be retained by the sellers in their permanent records as evidence of the exempt nature of diesel sales to eligible buyers. It is a gross misdemeanor for a buyer to make a false certificate of exemption for the purpose of avoiding the tax. Buyers may use the Buyers' Retail Sales Tax Exemption Certificate found on the department's web site at dor.wa.gov.

~~((e))~~ The certificate should be in substantially the following form:

**Diesel Fuel Exemption Certificate**

I HEREBY CERTIFY that diesel fuel which I will purchase from \_\_\_\_\_ (name of dealer) \_\_\_\_\_ will be used in the operation of a watercraft which is used in commercial deep sea or commercial passenger fishing operations outside the territorial waters of the state of Washington; that the registered name and number of the watercraft to which said purchase applies is \_\_\_\_\_ (registered vessel name and number) \_\_\_\_\_; that the owner(s) of said vessel has gross income, based on federal income tax returns, of not less than five

This rule was adopted January 4, 2016 and becomes effective February 4, 2016. It may be used to determine tax liability on and after the effective date, until the codified version is available from the code reviser's office.

~~thousand dollars a year from such extra territorial fishing operations; and that said sales are entitled to exemption under the provisions of chapter 494, Laws of 1987.~~

Dated....., 19...

.....  
(Name of Purchaser)

By.....  
(Name of officer or agent)

Address.....))