



EXPEDITED RULE MAKING

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

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DATE: October 19, 2023

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WSR 23-22-012

Agency: Department of Revenue

Title of rule and other identifying information: (describe subject) WAC 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes, and similar health care facilities; WAC 458-20-244 Food and food ingredients.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Department of Revenue intends to update and amend WAC 458-20-168 and 458-20-244 to recognize recent legislation, SHB 1431 (2023).

Reasons supporting proposal: The proposed changes to WAC 458-20-168 and 458-20-244 are necessary in order to provide references and information in respect to a new retail sales tax exclusion for food, drinks, or meals furnished by senior living communities created during the 2023 legislative session.

Statutory authority for adoption: RCW 82.01.060; RCW 82.32.300

Statute being implemented: RCW 82.04.040

Is rule necessary because of a:

Federal Law?

☐ Yes

☒ No

Federal Court Decision?

☐ Yes

☒ No

State Court Decision?

☐ Yes

☒ No

If yes, CITATION:

Name of proponent: (person or organization) Department of Revenue

☐ Private

☐ Public

☒ Governmental

Name of agency personnel responsible for:

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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 update because the Department is incorporating provisions of SHB 1431 (2023) by reference without material change to Washington state rules.

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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Signature:



AMENDATORY SECTION (Amending WSR 22-14-014, filed 6/23/22, effective 7/24/22)

WAC 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes, and similar health care facilities. (1) Introduction. This rule explains the application of business and occupation (B&O), retail sales, and use taxes to persons operating:

- Hospitals as defined in RCW 70.41.020;
- Nursing homes as defined in RCW 18.51.010;
- Assisted living facilities as defined in RCW 18.20.020;
- Adult family homes as defined in RCW 70.128.010;
- Senior living communities as defined in RCW 82.04.040; and
- Similar health care facilities.

(a) **Examples.** This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(b) **Other rules that may apply.** Readers may want to refer to the rules in the following list for additional information:

- (i) WAC 458-20-102 Reseller permits.
- (ii) WAC 458-20-111 Advances and reimbursements.
- (iii) WAC 458-20-150 Optometrists, ophthalmologists, and opticians.
- (iv) WAC 458-20-151 Dentists, audiologists, and other health care providers—Dental laboratories and dental technicians.
- (v) WAC 458-20-169 Nonprofit organizations.
- (vi) WAC 458-20-178 Use tax and the use of tangible personal property.
- (vii) WAC 458-20-18801 Medical substances, devices, and supplies for humans—Drugs prescribed for human use—Medically prescribed oxygen—Prosthetic devices—Mobility enhancing equipment—Durable medical equipment.

(viii) WAC 458-20-233 Tax liability of medical and hospital service bureaus and associations and similar health care organizations.

(2) **Personal and professional services of hospitals.** For purposes of this rule, the following definitions apply:

• **"Hospital"** - The term hospital is as defined in RCW 70.41.020. It includes hospitals that come within the scope of chapter 71.12 RCW, but only if they are also licensed under chapter 70.41 RCW.

• **"Public hospital" or "nonprofit hospital"** - Public or nonprofit hospitals are hospitals operated by the state or any of its political subdivisions or operated as nonprofit corporations.

(a) **Hospital services to patients.** Gross income earned by hospitals for providing personal or professional services to patients is subject to B&O tax as shown in the table below. RCW 82.04.260.

Report Income From Providing Personal or Professional Services	Reporting Classification
For profit hospitals	For profit hospitals B&O tax classification
Public and nonprofit hospitals	Public or nonprofit hospitals B&O tax classification

Gross income earned for providing nonmedical services, interest received on patient accounts receivable, and amounts earned for pro-

viding transcribing services to physicians are subject to service and other activities B&O tax.

(b) **Clinics and departments operated by hospitals.** Gross income earned by medical clinics and departments providing services to patients and operated by a hospital is subject to B&O tax as shown in subsection (2)(a) of this rule, where the operation of a medical clinic or department is covered by the hospital's license. If the clinic or department is not covered by the hospital's license, the gross income earned by a medical clinic or department providing services to patients is subject to B&O tax under the service and other activities B&O tax classification.

(i) **Example 1.** Acme Hospital is a nonprofit hospital that has a medical clinic that is physically located within the hospital. The clinic is open only during the hours of 8:00 a.m. to 5:00 p.m., and provides no domiciliary care or overnight facilities to its patients. The medical clinic is covered under Acme Hospital's hospital license. Gross income earned by the medical clinic for providing patient care is subject to the Public and Nonprofit Hospital B&O Tax Classification because the clinic is covered under the hospital license.

(ii) **Example 2.** Mountain Hospital is a for profit hospital with a cancer treatment facility that is located one mile from the hospital campus. The cancer treatment facility provides the type of services normally provided by hospitals to cancer patients but only during regular business hours. The cancer treatment facility is covered under the hospital's license. Gross income earned by the cancer treatment facility is subject to the For Profit Hospitals B&O tax classification because the facility is covered under the hospital's license.

(c) **Educational programs and services.** Amounts earned by public or nonprofit hospitals for providing educational programs and services to the general public are subject to B&O tax under the public or nonprofit hospitals classification if the educational programs and services are an integral, interrelated, and essential part of the hospital. Otherwise, such amounts are subject to B&O tax under the service and other activities classification. Educational services are considered an integral, interrelated, and essential part of the hospital only if they are unique and incidental to the provision of hospitalization services. Only those educational programs and services offered by a hospital that would be very difficult or impossible to duplicate by a person other than a hospital because of the specialized body of knowledge, facilities, and equipment required are unique and incidental to the provision of hospitalization services. Amounts received from educational programs and services are subject to the service and other activities B&O tax when the educational programs or services could be provided by any physician, clinic, or trained lay person.

(3) **Personal and professional services from other medical clinics, nursing homes, and similar health care facilities.** Gross income earned by medical clinics, nursing homes, and similar health care facilities for providing personal and professional services is subject to service and other activities B&O tax. Physicians performing these services are also subject to service and other activities B&O tax on gross income earned. Services provided are ones not integral, interrelated, and an essential part of a hospital operation.

(4) **Assisted living facilities and domiciliary care.** For the purpose of this rule, "assisted living facilities" and "domiciliary care" have the same meaning as found in RCW 18.20.020. A preferential B&O tax rate is provided by RCW 82.04.2908 to persons operating assisted living facilities licensed under chapter 18.20 RCW. Persons operating

licensed assisted living facilities should report their gross income derived from providing room and domiciliary care to residents under the licensed assisted living facilities B&O tax classification. Refer to subsection (9)(h) of this rule for B&O tax deductions and exemptions available to persons operating assisted living facilities.

(5) **Hospitals or other health care facilities operated by the state of Washington.** Gross income earned by the state of Washington for operating a hospital or other health care facilities, whether or not owned by the state, is not subject to B&O tax.

(6) **Nonprofit corporations and associations performing research and development.** A separate B&O tax rate applies to nonprofit corporations and nonprofit associations for gross income earned in performing research and development within this state, including medical research. See RCW 82.04.260.

(7) **Sales of tangible personal property.** Retailing B&O tax applies to sales of tangible personal property sold and billed separately from the performance of personal or professional services by hospitals, nursing homes, assisted living facilities, adult family homes, and similar health care facilities. This includes charges for making copies of medical records. The seller must collect retail sales tax from the buyer and remit the tax to the department unless the sale is specifically exempt by law.

(a) **Tangible personal property used in providing medical services to patients.** Retailing B&O and retail sales taxes do not apply to charges to a patient for tangible personal property used in providing medical services to the patient, even if separately billed. Tangible personal property used in providing medical services is not considered to have been sold separately from the medical services simply because those items are separately invoiced. These charges, even if separately itemized, are for providing medical services.

For example, when a hospital charges a patient for drugs physically administered by the hospital staff, the charges to the patient are subject to B&O tax under the appropriate tax classification as shown in subsection (2)(a) of this rule based on the hospital making the charge. However, charges for drugs sold to persons or their caregivers, either for self-administration or administration by a caregiver other than the seller, are subject to retailing B&O tax and retail sales tax unless specifically exempt by law. Readers should refer to WAC 458-20-18801 for detailed information regarding retail sales tax exemptions that apply to sales of prescription drugs and other medical items.

(b) **Sales of food, drinks, and meals.** Although the sale of food, drinks, or meals is generally considered to be a retail sale((7)):

(i) Hospitals, nursing homes, assisted living facilities, and similar health care facilities that furnish meals to patients or residents as a part of the services provided to those patients or residents are not considered to be making retail sales of meals. Thus, such amounts are not subject to retail sales tax. However, amounts earned by hospitals, nursing homes, assisted living facilities, and similar health care facilities for furnishing meals to patients or residents are subject to B&O tax as part of the services provided to those patients or residents((. Such amounts are not subject to retail sales tax.));

(ii) Senior living communities that furnish food, drinks, or meals to tenants as a part of a rental or residency agreement for which no separate charge is made, regardless of whether the tenant is a resident for purposes of chapter 18.20 or 18.390 RCW, are not con-

sidered to be making retail sales of food, drinks, or meals. Thus, such sales are not subject to retail sales tax. However, amounts earned by senior living communities for furnishing food, drinks, or meals to tenants, as described in this subsection (7)(b)(ii), are subject to B&O tax as part of the services provided to those tenants. RCW 82.04.040;

(iii) RCW 82.08.0293 and 82.12.0293 provide, respectively, retail sales tax and use tax exemptions for prepared meals sold to senior citizens, disabled persons, or low-income persons by a nonprofit organization organized under chapter 24.03A or 24.12 RCW. The exemptions apply to sales of prepared meals to nonprofit organizations organized under chapter 24.03A or 24.12 RCW, that provide the meals to senior citizens, disabled persons, or low-income persons as a part of the patient services they render((-)); and

(iv) Hospitals, nursing homes, assisted living facilities, and similar health care facilities may have restaurants, cafeterias, or other dining facilities where meals are sold to doctors, employees, and visitors. These sales of meals are subject to retailing B&O and retail sales taxes. For additional information regarding the sale of meals, including meals furnished to employees, refer to WAC 458-20-124.

(8) Industry reporting. This subsection discusses common reporting issues affecting persons operating medical or other health care facilities.

(a) Adjustments to revenues. Many hospitals provide medical care without charge or where some portion of the charge will be canceled. In other cases, medical care is billed to patients at "standard" rates but is later adjusted to reduce the charges to the rates established by contract with medicare, medicaid, or private insurers. In these situations, the hospital must initially include the total charges as billed to the patient as gross income unless the hospital's records clearly indicate the amount of income to which it will be entitled under its contracts with insurance carriers. Where tax returns are initially filed based on gross charges, an adjustment may be taken on future tax returns after the hospital has adjusted its records to reflect the actual amounts collected. In no event may the hospital reduce the amount of its current gross income by amounts that were not previously reported on its excise tax return. If the tax rate changes from the time the B&O tax was first paid on the gross charges and the time of the adjustment, the hospital must file amended tax returns to report the B&O tax on the transaction as finally completed at the rate in effect when the service was performed.

(b) Tax consequences if a hospital contracts with an independent contractor to provide medical services at the hospital. When a hospital contracts with an independent contractor (service provider) to provide medical services, such as managing and staffing the hospital's emergency department, the hospital may not deduct the amount paid to the service provider from its gross income. If, however, the patients are alone liable for paying the service provider, and the hospital has no personal liability, either primarily or secondarily, for paying the service provider, other than as agent for the patients, then the hospital may deduct from its gross income the amount it receives and pays to the service provider.

In addition, the service provider is subject to service and other activities B&O tax on the amount earned from the hospital for providing these services for the hospital. If the service provider subcontracts with a third party, such as a physician or nurse, to help pro-

vide medical services as an independent contractor, the service provider may not deduct from its gross income amounts paid to the subcontractor where the service provider is personally liable, either primarily or secondarily, for paying the subcontractor. If, however, the hospital is alone liable for paying the subcontractor, and the service provider has no personal liability, either primarily or secondarily, other than as agent for the hospital, then the service provider may deduct from its gross income the amount it receives from the hospital and pays to the subcontractor. For additional information regarding deductible advances and reimbursements, refer to WAC 458-20-111.

(c) **Nursing homes and assisted living facilities may not claim a B&O tax exemption for the rental of real estate.** The purpose of nursing homes is to provide medical care to their residents. The purpose of assisted living facilities is to assume general responsibility for the safety and well-being of their residents and to provide other services to residents such as housekeeping, meals, laundry, and activities. Assisted living facilities may also provide residents with assistance with activities of daily living, health support services, and intermittent nursing services. Because the purpose of nursing homes and assisted living facilities is to provide services and not to lease or rent real property, no part of the gross income of nursing homes or assisted living facilities is exempted from B&O tax as the rental of real estate.

(9) **B&O tax deductions, credits, and exemptions.** This subsection provides information about B&O tax deductions, credits, and exemptions available to persons operating medical or other health care facilities.

Deductible amounts should be included in the gross income reported on the combined excise tax return and then identified on the appropriate deduction detail line of the return to determine the amount of taxable income.

(a) **Organ procurement organizations.** RCW 82.04.326 provides a B&O tax exemption for amounts earned by a qualified organ procurement organization under 42 U.S.C. Sec. 273(b) in effect as of January 1, 2001, to the extent that the amounts are exempt from federal income tax.

(b) **Contributions, donations, and endowment funds.** RCW 82.04.4282 provides a B&O tax deduction for amounts received as contributions, donations, and endowment funds, including grants, which are not in exchange for goods, services, or business benefits. For example, a B&O tax deduction is allowed for donations received by a public hospital, as long as the donors do not receive any goods, services, or any business benefits in return. On the other hand, a public hospital may not take a B&O tax deduction on amounts earned from a state university for work-study programs or training seminars, because the university receives business benefits in return, as students receive education and training while enrolled in the university's degree programs.

(c) **Adult family homes.** RCW 82.04.327 provides a B&O tax exemption for gross income derived from personal and professional services of adult family homes licensed by the department of social and health services (DSHS), or which are specifically exempt from licensing under the rules of DSHS. This exemption does not apply to persons who provide home care services to clients in the clients' own residences.

For the purpose of this rule, "adult family home" has the same meaning as in RCW 70.128.010.

(d) **Nonprofit kidney dialysis facilities, hospice agencies, and nonprofit nursing homes and homes for unwed mothers.** RCW 82.04.4289

provides a B&O tax exemption for amounts earned as compensation for services rendered to patients or from sales of drugs for human use pursuant to a prescription furnished as an integral part of services rendered to patients by kidney dialysis facilities operated as a non-profit corporation, nonprofit hospice agencies licensed under chapter 70.127 RCW, nonprofit nursing homes and homes for unwed mothers operated as religious or charitable organizations. This exemption applies only if no part of the net earnings earned by such an institution inures, directly or indirectly, to any person other than the institution entitled to this exemption. This exemption is available to nonprofit hospitals for income from the operation of kidney dialysis facilities if the hospital accurately identifies and accounts for the income from this activity.

Examples of nonprofit nursing homes include nursing homes operated by church organizations or by nonprofit corporations designed to assist alcoholics in recovery and rehabilitation. Nursing homes and homes for unwed mothers operated by governmental entities, including public hospital districts, do not qualify for the B&O tax exemption provided in RCW 82.04.4289.

(e) **Government payments made to health or social welfare organizations.** RCW 82.04.4297 provides a B&O tax deduction to health or social welfare organizations, as defined in RCW 82.04.431, for amounts earned directly from the United States, any instrumentality of the United States, the state of Washington, or any municipal corporation or political subdivision of the state of Washington as compensation for health or social welfare services.

RCW 82.04.4275 provides a B&O tax deduction for amounts health or social welfare organizations receive as compensation for providing child welfare services under a government-funded program.

A deduction is not allowed, however, for amounts that are received under an employee benefit plan. For purposes of the deduction provided by RCW 82.04.4297, "employee benefit plan" includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501(c)(9) and (17) through (23) of the Internal Revenue Code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan, trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law.

(f) **Amounts earned under a health service program subsidized by federal or state government.** RCW 82.04.4311 provides a B&O tax deduction to:

- A public hospital that is owned by a municipal corporation or political subdivision; or
- A nonprofit hospital; or
- A nonprofit community health center; or
- A network of nonprofit community health centers, that qualifies as a health and social welfare organization as defined in RCW 82.04.431, for amounts earned as compensation for health care services covered under the federal medicare program authorized under Title XVIII of the federal Social Security Act; medical assistance, children's health, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. This deduction applies to amounts received directly or through a third party from the qualified programs or plans. However, it does not apply to amounts received from patient copayments or patient deductibles. For

purposes of the deduction provided by RCW 82.04.4311, "community health center" means a federally qualified health center as defined in 42 U.S.C. Sec. 1396d as existed on August 1, 2005.

Example 3. Acme Hospital is a nonprofit hospital that qualifies as a health and social welfare organization as defined in RCW 82.04.431. Acme receives \$1,000 for providing health care services to Jane, who qualifies for the federal medicare program authorized under Title XVIII of the federal Social Security Act. Jane is covered in a health care plan that is a combination of medicare, which is B&O tax deductible by Acme, and a medicare plus plan, which is paid for by Jane and is not B&O tax deductible by Acme. Jane pays \$20 to Acme as patient copayments. Medicare pays \$600 to Acme for the health care services, and the medicare plus plan pays \$380. Acme may deduct only the \$600 received from medicare.

(g) **Blood and tissue banks.** Except as otherwise provided, RCW 82.04.324 provides a B&O tax exemption for amounts earned by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank to the extent such amounts are exempt from federal income tax.

For the purposes of this exemption, the following definitions apply:

(i) **Qualifying blood bank.** "Qualifying blood bank" means a blood bank that qualifies as an exempt organization under 26 U.S.C. 501(c)(3) as existing on June 10, 2004, that is registered under 21 C.F.R., Part 607 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood.

"Qualifying blood bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(ii) **Qualifying tissue bank.** "Qualifying tissue bank" means a tissue bank that qualifies as an exempt organization under 26 U.S.C. 501(c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., Part 1271 as existing on June 10, 2004, and whose primary business purpose is the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, heart valve tissue, or human eye tissue. "Qualifying tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(iii) **Qualifying blood and tissue bank.** "Qualifying blood and tissue bank" means a bank that qualifies as an exempt organization under 26 U.S.C. 501(c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., Parts 607 and 1271 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood, and the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, and heart valve tissue.

"Qualifying blood and tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(h) **Assisted living facilities.** RCW 82.04.4337 provides a B&O tax deduction to licensed assisted living facility operators for amounts earned as compensation for providing adult residential care, enhanced adult residential care, or assisted living services under contract with the department of social and health services authorized by chapter 74.39A RCW to residents who are medicaid recipients. For the purpose of this rule, "adult residential care," "enhanced adult residential care," and "assisted living services" have the same meaning as in RCW 74.39A.009.

In addition, RCW 82.04.4264 provides a B&O tax exemption for amounts earned by a nonprofit assisted living facility licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the assisted living facility. For purposes of this rule, "nonprofit assisted living facility" means an assisted living facility that is operated as a religious or charitable organization, is exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3), is incorporated under chapter 24.03A RCW, is operated as part of a nonprofit hospital, or is operated as part of a public hospital district.

(i) **Comprehensive cancer centers.** RCW 82.04.4265 provides a B&O tax exemption for amounts earned by a comprehensive cancer center to the extent such amounts are exempt from federal income tax. For purposes of this rule, "comprehensive cancer center" means a cancer center that has written confirmation that it is recognized by the National Cancer Institute as a comprehensive cancer center and that qualifies as an exempt organization under 26 U.S.C. Sec. 501(c)(3) as existing on July 1, 2006.

(j) **Prescription drugs administered by the medical service provider.** RCW 82.04.620 allows a deduction from the measure of tax for reporting under the service and other activities classification of the B&O tax (RCW 82.04.290) for amounts earned by physicians or clinics for drugs for infusion or injection by licensed physicians or their agents for human use pursuant to a prescription. This deduction only applies to amounts that:

(i) Are separately stated on invoices or other billing statements;

(ii) Do not exceed the then current federal rate; and

(iii) Are covered or required under a health care service program subsidized by the federal or state government.

For the purpose of this deduction only, amounts that "are covered or required under a health care service program subsidized by the federal or state government" include any required drug copayments made directly from the patient to the physician or clinic.

(A) "Federal rate" means the rate at or below which the federal government or its agents reimburse providers for prescription drugs administered to patients as provided for in the medicare, Part B, drugs average sales price information resource as published by the United States Department of Health and Human Services, or any index that succeeds it.

(B) The deduction is available on an "all or nothing" basis against the total amount earned for a specific drug charge. If the total amount earned by the physician or clinic for a specific drug exceeds the federal reimbursement rate, none of the total amount earned qualifies for the deduction (including any required copayment received directly from the patient). In other words, a physician or clinic may not simply take an "automatic" deduction equal to the federal reimbursement rate for each drug.

(C) For physicians or clinics reporting taxes on the accrual basis, the total amount charged for a drug must be included in the gross income at the time of billing if it is in excess of the federal rate. However, in some cases the gross income from charges may be adjusted, as indicated in subsection (8)(a) of this rule. If such an adjustment to gross income is appropriate, the exemption discussed in this subsection may also be taken at the time of billing if the adjustment leaves the physician or clinic contractually liable to receive a total amount, including any copayment received from the patient that does not exceed the federal rate.

(10) **Sales, use, and other specified taxes deductions and exemptions.** Unless otherwise exempt by law, hospitals, nursing homes, adult family homes, assisted living facilities, and similar health care providers are required to pay retail sales tax on purchases of equipment and supplies. The deductions and exemptions listed in this subsection are available to qualified persons.

(a) For the purpose of this subsection, the following definitions apply:

(i) **"Chemical"** means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(ii) **"Materials"** for the purposes of RCW 82.08.02807 means any item of tangible personal property including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants, used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(iii) **"Medical supplies"** means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a comprehensive cancer center for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(A) Provide preparatory treatment of blood, bone, or tissue;

(B) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(C) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(iv) **"Research"** means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

(b) **Temporary medical housing provided by a health or social welfare organization.** RCW 82.08.997 provides an exemption from state and local retail sales taxes and lodging taxes for temporary medical housing provided by a health or social welfare organization. The term "health or social welfare organization" is defined in RCW 82.04.431. "Temporary medical housing" means transient lodging and related services provided to a patient or the patient's immediate family, legal guardian, or other persons necessary to the patient's mental or physical well-being.

(i) The exemption applies to the following taxes:

(A) Retail sales tax levied under RCW 82.08.020;

(B) Lodging taxes levied under chapter 67.28 RCW;

(C) Convention and trade center tax levied under chapter 36.100 RCW;

(D) Public facilities tax levied under RCW 36.100.040; and

(E) Tourism promotion areas tax levied under RCW 35.101.050.

(ii) The exemptions in this subsection apply to charges made for "temporary medical housing" only:

(A) While the patient is receiving medical treatment at a hospital required to be licensed under RCW 70.41.090 or at an outpatient clinic associated with such hospital, including any period of recuperation or observation immediately following such medical treatment; and

(B) By a person that does not furnish lodging or related services to the general public.

(c) **Purchases for resale.** Purchases of tangible personal property for resale without intervening use are not subject to retail sales tax. Persons purchasing tangible personal property for resale must furnish a copy of their reseller permit to the seller to document the wholesale nature of the sale.

(d) **Sales of medical supplies, chemicals, or materials to a comprehensive cancer center.** RCW 82.08.808 and 82.12.808 provide, respectively, retail sales tax and use tax exemptions for sales of medical supplies, chemicals, or materials to a comprehensive cancer center. These exemptions do not apply to sales of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(e) **Sales of medical supplies, chemicals, or materials to organ procurement organizations.** RCW 82.08.02807 and 82.12.02749 provide, respectively, retail sales tax and use tax exemptions for sales of medical supplies, chemicals, or materials to organ procurement organizations exempt under RCW 82.04.326. These exemptions do not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(11) **Buyer's responsibility to remit deferred sales or use tax.** If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax, commonly referred to as "deferred sales tax", or use tax directly to the department unless the purchases are specifically exempt by law. For detailed information regarding the use tax, refer to WAC 458-20-178.

(a) **Reporting deferred sales or use tax.** Persons registered with the department and required to file tax returns should report deferred sales or use tax on their combined excise tax return. As the combined excise tax return does not have a separate line for reporting deferred sales tax, the buyer should report the tax liability on the use tax line. If a deferred sales tax or use tax liability is incurred by a person who is not required to be registered with the department, the person must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department.

(b) **Consumer Use Tax Return.** The Consumer Use Tax Return may be obtained from the department's website at dor.wa.gov, or by calling the department's telephone information center at 1-360-705-6705.

AMENDATORY SECTION (Amending WSR 22-24-096, filed 12/6/22, effective 1/6/23)

WAC 458-20-244 Food and food ingredients. (1) **Introduction.** This rule provides guidelines for determining if food or food ingredients qualify for the retail sales tax and use tax exemptions under RCW 82.08.0293 and 82.12.0293 (collectively referred to in this rule as the "exemptions").

There is no corresponding business and occupation (B&O) tax exemption. Even if a sale of food or food ingredients is exempt from retail sales tax or use tax under the exemptions, gross proceeds from sales of food or food ingredients remain subject to the retailing B&O tax.

(2) **Other rules that may apply.** Rules in the following list may contain additional relevant information:

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

(b) WAC 458-20-124 Restaurants, cocktail bars, taverns and similar businesses;

(c) WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, hostels, trailer camps, short-term rentals and similar lodging businesses;

(d) WAC 458-20-167 Educational institutions, school districts, student organizations, and private schools;

(e) WAC 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes, and similar health care facilities. This rule also provides information on an exclusion from retail sales tax for certain food, drinks, or meals furnished by senior living communities;

(f) WAC 458-20-169 Nonprofit organizations;

(g) WAC 458-20-229 Refunds; and

(h) WAC 458-20-243 Litter tax.

(3) Items qualifying for the exemptions.

(a) **In general.** The exemptions apply to food and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

(b) **Items not used solely for ingestion or chewing.** Items that are commonly ingested or chewed by humans for their taste or nutritional value but which may also be used for other purposes are generally treated as food or food ingredients. For example, pumpkins are presumed to be a food or food ingredient unless the pumpkin is sold painted or is otherwise clearly for decorative purposes rather than consumption. This is true even though the purchaser may use an undecorated pumpkin for carving and display rather than for eating.

(4) **Items not qualifying for the exemptions.** The exemptions do not apply to the following items, which are not considered "food or food ingredients" or which are otherwise specifically excluded from the exemptions:

(a) **Items sold for medical or hygiene purposes.** Items commonly used for medical or hygiene purposes, such as cough drops, breath sprays, toothpaste, etc., are not ingested for taste or nutrition and are not considered a food or food ingredient. In contrast, breath mints are commonly ingested for taste and are considered a food or food ingredient.

(b) **Bulk sales of ice.** Ice sold in bags, containers, or units of greater than 10 pounds and blocks of ice of any weight are not considered a food or food ingredient. Ice sold in cubed, shaved, or crushed form in packages or quantities of 10 pounds or less is considered a food or food ingredient. Refer to WAC 458-20-120, Sales of ice, for additional guidance on the sale of ice.

(c) **Alcoholic beverages.** Alcoholic beverages are excluded from the definition of food and food ingredients. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

(d) **Tobacco.** Tobacco is excluded from the definition of food and food ingredients. "Tobacco" includes cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(e) **Cannabis.** Cannabis, useable cannabis, cannabis concentrates, or cannabis-infused products, as defined in RCW 69.50.101, are excluded from the definition of food and food ingredients. "Cannabis" means

all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis.

(f) **Bottled water.** Bottled water is excluded from the exemptions for food and food ingredients. "Bottled water" means water that is placed in a safety sealed container or package for human consumption.

(i) Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain:

- (A) Antimicrobial agents;
- (B) Fluoride;
- (C) Carbonation;
- (D) Vitamins, minerals, and electrolytes;
- (E) Oxygen;
- (F) Preservatives; and

(G) Only those flavors, extracts, or essences derived from a spice or fruit.

(ii) **Exemptions for tax on bottled water.** There are limited retail sales tax exemptions on bottled water. Sellers must collect the retail sales tax on all sales of bottled water, unless the bottled water is delivered to the buyer as described in (f)(ii)(C) of this subsection. Any buyer that has paid at least \$25.00 in state and local taxes on purchases of bottled water subject to the exemptions described in (f)(ii)(A) and (B) of this subsection may apply for a refund of the taxes directly from the department.

(A) **Prescription issued bottled water.** Bottled water prescribed to patients for use in the cure, mitigation, treatment, or prevention of disease or other medical condition is exempt. RCW 82.08.9994. The bottled water must be prescribed, through an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission, by a licensed practitioner authorized by Washington law to prescribe.

(B) **Primary water source unsafe.** Bottled water for human use by persons whose primary source of drinking water is unsafe is exempt. RCW 82.08.99941. A person's primary source of drinking water is unsafe if:

(I) The public water system providing the drinking water has issued a public notification that the drinking water may pose a health risk, and the notification is still in effect on the date that the bottled water was purchased;

(II) Test results on the person's drinking water, which are no more than 12 months old, from a laboratory certified to perform drinking water testing show that the person's drinking water does not meet safe drinking water standards applicable to public water systems; or

(III) The person otherwise establishes, to the department's satisfaction, that the person's drinking water does not meet safe drinking water standards applicable to public water systems.

(C) **Bottled water delivered to the buyer in a reusable container not sold with the water.** Buyers claiming an exemption listed in (f)(ii)(A) or (B) of this subsection that have the qualifying water delivered in a reusable container that is not sold with the water must complete a retail sales exemption certificate and provide it to the seller. The seller must retain a copy of the certificate.

(iii) For information regarding exemption certificates and refund requests, visit dor.wa.gov.

(g) **Soft drinks.** Soft drinks are excluded from the exemptions for food and food ingredients. "Soft drinks" means any nonalcoholic beverage that contains natural or artificial sweeteners, except beverages that contain:

- (i) Milk or milk products;
- (ii) Soy, rice, or similar milk substitutes; or
- (iii) More than 50 percent by volume of vegetable or fruit juice.

For example, sweetened sports beverages are considered "soft drinks," but a sweetened soy beverage is a food or food ingredient.

Beverage mixes that are not sold in liquid form are not soft drinks even though they are intended to be made into a beverage by the customer. Examples include powdered fruit drinks, powdered tea or coffee drinks, and frozen concentrates. These items are food or food ingredients and are not subject to retail sales tax.

(h) **Dietary supplements.** Dietary supplements are excluded from the exemptions for food and food ingredients. "Dietary supplement" means any product intended to supplement the diet, other than tobacco, which meets all of the following requirements:

- (i) Contains a vitamin; mineral; herb or other botanical; an amino acid; a substance for use by humans to increase total dietary intake; or a concentrate, metabolite, constituent, extract; or a combination of any of these ingredients;

- (ii) Is intended for ingestion in tablet, capsule, powder, soft gel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

- (iii) Is required to be labeled with a Food and Drug Administration "supplement facts" box. If a product is otherwise considered a food or food ingredient and labeled with both a "supplement facts" box and "nutrition facts" box, the product is treated as a food or food ingredient.

Nutrition products formulated to provide balanced nutrition as a sole source of a meal or of the diet are considered a food or food ingredient and not a dietary supplement. Refer to RCW 82.08.925 for information on the retail sales tax exemption applicable to dietary supplements dispensed under a prescription.

(i) **Prepared food.** Prepared food is excluded from the exemptions for food and food ingredients. Prepared food generally means heated foods, combined foods, or foods sold with utensils provided by the seller, as described in more detail in subsection (5) of this rule.

(5) **Items designated as prepared foods.** Food or food ingredients are "prepared foods" if any one of the following is true:

- (a) **Heated foods.** Food or food ingredients are "prepared foods" if sold in a heated state or are heated by the seller, except bakery items. "Bakery items" include bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas. Food is sold in a heated state or is heated by the seller when the seller provides the food to the customer at a temperature that is higher than the air temperature of the seller's establishment. Food is not sold in a heated state or heated by the seller if the customer, rather than the seller, heats the food in a microwave provided by the seller.

- (b) **Combined foods.** Food or food ingredients are "prepared foods" if the item sold consists of two or more foods or food ingredients mixed or combined by the seller for sale as a single item, unless the food or food ingredients are any of the following:

- (i) Bakery items (defined in (a) of this subsection);

- (ii) Items that the seller only cuts, repackages, or pasteurizes;

- (iii) Items that contain eggs, fish, meat, or poultry, in a raw or undercooked state requiring cooking as recommended by the federal Food and Drug Administration in chapter 3, part 401.11 of *The Food*

Code, published by the Food and Drug Administration, as amended or re-numbered as of January 1, 2003, so as to prevent foodborne illness; or

(iv) Items sold in an unheated state as a single item at a price that varies based on weight or volume.

(c) **Food sold with utensils provided by the seller.** Food or food ingredients are "prepared foods" if sold with utensils provided by the seller. Utensils include plates, knives, forks, spoons, glasses, cups, napkins, and straws. A plate does not include a container or packaging used to transport the food.

(i) **Utensils are customarily provided by the seller.** A food or food ingredient is "sold with utensils provided by the seller" if the seller's customary practice for that item is to physically deliver or hand a utensil to the customer with the food or food ingredient as part of the sales transaction. If the food or food ingredient is pre-packaged with a utensil, the seller is considered to have physically delivered a utensil to the customer unless the food and utensil are prepackaged together by a food manufacturer classified under sector 311 of the NAICS. Examples of utensils provided by such manufacturers include juice boxes that are packaged with drinking straws, and yogurt or ice cream cups that are packaged with wooden or plastic spoons.

(ii) **Utensils are necessary to receive the food.** Individual food or food ingredient items are "sold with utensils provided by the seller" if a plate, glass, cup, or bowl is necessary to receive the food or food ingredient and the seller makes those utensils available to its customers. For example, items obtained from a self-serve salad bar are sold with utensils provided by the seller, because the customer must use a bowl or plate provided by the seller in order to receive the items.

(iii) **More than 75 percent prepared food sales with utensils available.** All food and food ingredients sold at an establishment, including foods prepackaged with a utensil by a manufacturer classified under sector 311 of the NAICS, are "sold with utensils provided by the seller" if the seller makes utensils available to its customers and the seller's gross retail sales of prepared food under (a), (b), and (c)(ii) of this subsection equal more than 75 percent of the seller's gross retail sales of all food and food ingredients, including prepared food, soft drinks, bottled water, and dietary supplements.

(A) **Exception for four or more servings.** Even if a seller has more than 75 percent prepared food sales, four servings or more of food or food ingredients packaged for sale as a single item and sold for a single price are not "sold with utensils provided by the seller" unless the seller's customary practice for the package is to physically hand or otherwise deliver a utensil to the customer as part of the sales transaction. Whenever available, the number of servings included in a package of food or food ingredients is to be determined based on the manufacturer's product label. If no label is available, the seller must reasonably determine the number of servings.

(B) **Determining total sales of prepared foods.** The seller must determine a single prepared food sales percentage annually for all the seller's establishments in the state based on the prior year of sales. The seller may elect to determine its prepared food sales percentage based either on the prior calendar year or on the prior fiscal year. A seller may not change its elected method for determining its prepared food percentage without the written consent of the department of revenue. The seller must determine its annual prepared food sales percentage as soon as possible after accounting records are available, but in no event later than 90 days after the beginning of the seller's calen-

dar or fiscal year. A seller may make a good faith estimate of its first annual prepared food sales percentage if the seller's records for the prior year are not sufficient to allow the seller to calculate the prepared food sales percentage. The seller must adjust its good faith estimate prospectively if its relative sales of prepared foods in the first 90 days of operation materially depart from the seller's estimate.

(d) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) **Example 1.** Fast Cafe sells hot and cold coffee and mixed coffee and mixed milk beverages, cold soft drinks, milk and juice in single-serving containers, sandwiches, whole fruits, cold pasta salad, cookies and other pastries. Fast Cafe prepares the pasta salad on-site. It orders the pastries from a local bakery, including specialty cakes which it sells both as whole cakes and by the slice. It purchases its sandwiches from a local caterer. The sandwiches are delivered by the caterer prewrapped in plastic with condiments and a plastic knife. Fast Cafe makes straws, napkins and cup lids available for all customers by placing them on a self-service stand. In its first full year of operation, Fast Cafe's annual gross retail sales of all food and food ingredients, including prepared food, soft drinks, bottled water, and dietary supplements is \$100,000. Of this gross retail sales total, \$80,000 is from the sale of hot coffee and hot and cold mixed coffee and milk beverages, all sold in disposable paper or plastic cups with the Fast Cafe logo.

Because more than 75 percent of Fast Cafe's total retail sales of food and food ingredients, including prepared food, soft drinks, bottled water, and dietary supplements are sales of food or food ingredients that are heated or combined by the seller or sold with a utensil (cups) necessary to receive the food, Fast Cafe has more than 75 percent prepared food sales. Because Fast Cafe makes utensils available for its customers, all food and food ingredients sold by Fast Cafe are considered "prepared food," including the cold milk beverages, cookies and pastries, pasta salad, sandwiches and whole fruits. The only exception is the sale of whole specialty cakes. Because a whole cake contains four or more servings, it is not subject to retail sales tax unless Fast Cafe customarily hands a utensil to the customer as part of the sale transaction.

(ii) **Example 2.** Assume the same facts as in Example 1, but that only \$60,000 of Fast Cafe's Year 1 gross retail sales were sales of hot coffee and hot and cold mixed coffee and milk beverages. The remainder of its retail sales were sales of sandwiches, whole fruits, cookies and other pastries. Under these facts, Fast Cafe does not have more than 75 percent prepared food sales. Thus, the items sold by Fast Cafe are taxed as follows:

(A) Hot coffee and milk beverages are heated by the seller and are also sold by Fast Cafe with a utensil (a paper cup) necessary to receive the food. The hot coffee and milk beverages are "prepared food" for either reason and are subject to retail sales tax.

(B) Cold mixed milk beverages are a combination of two or more foods or food ingredients and are also sold by Fast Cafe with a utensil (a paper or plastic cup) necessary to receive the food. The cold milk beverages are "prepared food" for either reason and are subject to retail sales tax.

(C) Cold soft drinks are not exempt and are subject to retail sales tax.

(D) Sandwiches prepared by the caterer are subject to retail sales tax. Even though the caterer, rather than the seller, combines the ingredients and includes a utensil, Fast Cafe is considered to have provided the utensil because the caterer is not a food manufacturer classified under sector 311 of the NAICS.

(E) Pasta salad is combined by the seller and is subject to retail sales tax. Note that if the pasta salad was sold by the pound, rather than by servings, it would not be subject to retail sales tax.

(F) Milk and juice in single serving containers, whole fruit, cookies, pastries, slices of cake, and whole cakes are not subject to retail sales tax unless the seller's customary practice is to hand a utensil to the customer as part of the sales transaction. None of these items are heated by the seller, combined by the seller, or require a plate, glass, cup, or bowl in order to receive the item. Even if Fast Cafe heats the pastries for its customers, the pastries are not subject to retail sales tax.

(iii) **Example 3.** A pizza restaurant sells whole hot pizzas, hot pizza by the slice, and unheated ready-to-bake pizzas. The whole hot pizzas and hot pizza sold by the slice, including delivered pizzas, are "prepared food" because these items are sold in a heated state. If the unheated ready-to-bake pizzas are prepared by the seller, they are "prepared food" because the seller has mixed or combined two or more food ingredients. This is true even though some ingredients in the unheated pizzas are raw or uncooked, because those ingredients do not require cooking to prevent foodborne illness. If the unheated ready-to-bake pizzas are prepared by a manufacturer other than the seller, they will be taxable as "prepared food" only if sold with utensils provided by the seller.

(6) **Combined sales of taxable and exempt items.** Where two or more distinct and identifiable items of tangible personal property, at least one of which is a food or food ingredient, are sold for one nonitemized price that does not vary based on the selection by the purchaser of items included in the transaction:

(a) The entire transaction is taxable if the seller's purchase price or sales price of the taxable items is greater than 50 percent of the combined purchase price or sales price; and

(b) The entire transaction is exempt from retail sales tax if the seller's purchase price or sales price of the taxable items is 50 percent or less of the combined purchase price or sales price.

The seller may make the determination based on either purchase price or sales price, but may not use a combination of the purchase price and sales price.

Example. A combination wine and cheese picnic basket contains four items packaged together: A bottle of wine, a wine opener, single-serving cheeses, and the picnic basket holding these items. The seller's purchase price for the wine, wine-opener, and picnic basket totals \$10.00. The seller's purchase price for the cheeses is two dollars. The seller must collect retail sales taxes on the entire package, because the seller's purchase price for the taxable items (\$10.00) is greater than 50 percent of the combined purchase price (\$12.00).

(c) **Incidental packaging.** "Distinct and identifiable items" does not include packaging which is immaterial or incidental to the sale of another item or items. For example, a decorative bag sold filled with candy is not the sale of "distinct and identifiable" items where the

bag is merely ornamental packaging immaterial in the sale of the candy.

(d) **Free items.** "Distinct and identifiable items" does not include items provided free of charge. An item is only provided free of charge if the seller's sales price does not vary depending on whether the item is included in the sale.

(7) **Seller's accounting requirements.** All sales of food and food ingredients at an establishment will be treated as taxable unless the seller separately accounts for sales of exempt and nonexempt food and food ingredients. It is sufficient separation for accounting purposes if cash registers or the like are programmed to identify items that are not tax exempt and to calculate and assess the proper sales tax accordingly.

(8) **Other retail sales tax exemptions that may apply.**

(a) **Meals served to certain persons.** The exemptions apply to food and food ingredients furnished, prepared, or served as meals:

(i) Under a state-administered nutrition program for the aged as provided for in the Older Americans Act (Public Law 95-478 Title III) and RCW 74.38.040(6);

(ii) Provided to senior citizens, individuals with disabilities, or low-income persons by a nonprofit organization organized under chapter 24.03A or 24.12 RCW; or

(iii) Provided to residents, 62 years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (a)(iii) if at least one of the spouses or domestic partners is at least 62 years of age. For purposes of this subsection, "qualified low-income senior housing facility" means a facility:

(A) That meets the definition of a qualified low-income housing project under Title 26 U.S.C. Sec. 42 of the federal Internal Revenue Code, as existing on August 1, 2009;

(B) That has been partially funded under Title 42 U.S.C. Sec. 1485 of the federal Internal Revenue Code; and

(C) For which the lessor or operator has at any time been entitled to claim a federal income tax credit under Title 26 U.S.C. Sec. 42 of the federal Internal Revenue Code.

(b) **Foods exempt under the Supplemental Nutrition Assistance Program (SNAP).** Under RCW 82.08.0297, eligible foods purchased with food benefits under the SNAP or a successor program are exempt from the retail sales tax. This is a separate and broader exemption than the retail sales tax exemption for food and food ingredients under RCW 82.08.0293. For example, bottled water, soft drinks, garden seeds, and plants which produce food for the household to eat are "eligible foods" but are not "food or food ingredients." If such items are purchased with food benefits under SNAP or a successor program, they are exempt from the retail sales tax under RCW 82.08.0297, even though the items do not qualify for the exemption under RCW 82.08.0293.

(i) **Use of food benefits combined with other means of payment.** When both food benefits and other means of payment are used in the same sales transaction, for purposes of collecting retail sales taxes, the other means of payment must be applied first to items which are food and food ingredients exempt under RCW 82.08.0293. The intent is to apply the benefits and other means of payment in such a way as to provide the greatest possible exemption from retail sales tax.

(ii) **Example.** A customer purchases the following at a grocery store: Meat for three dollars, cereal for three dollars, canned soft drinks for five dollars, and soap for two dollars for a total of \$13.00. The customer pays with seven dollars in benefits and six dollars in cash. The cash is applied first to the soap because the soap is neither exempt under RCW 82.08.0293 nor an eligible food under SNAP. The remaining cash (four dollars) is applied first to the meat and the cereal. The food benefits are applied to the balance of the meat and cereal (two dollars) and to the soft drinks (five dollars). Retail sales tax is due only on the soap.

(9) **Vending machine sales.** The exemptions do not apply to sales of food and food ingredients dispensed from vending machines. There are special requirements for reporting retail sales tax collected on vending machine sales, discussed in (a) of this subsection. "Honor box" sales (sales of snacks or other items from open display trays) are not considered vending machine sales.

(a) **Calculating and reporting retail sales tax collected on vending machine sales.** Vending machine owners do not need to state the retail sales tax amount separately from the selling price. See RCW 82.08.050 and 82.08.0293. Instead, vending machine owners must determine the amount of retail sales tax collected on the sale of food or food ingredients by using one of the following methods:

(i) **Food or food ingredients dispensed in a heated state, soft drinks, and bottled water.** For food or food ingredients dispensed from vending machines in a heated state (e.g., hot coffee, soups, tea, and hot chocolate) and vending machine sales of soft drinks and bottled water, a vending machine owner must calculate the amount of retail sales tax that has been collected ("tax in gross") based on the gross vending machine proceeds. The "tax in gross" is a deduction against the gross amount of both retailing B&O and retail sales. The formula is:

$$\text{gross machine proceeds} - [(\text{gross machine proceeds}) / (1 + \text{sales tax rate})] = \text{tax in gross}$$

(ii) **All other food or food ingredients.** For all other food and food ingredients dispensed from vending machines, a vending machine owner must calculate the amount of retail sales tax that has been collected ("tax in gross") based on 57 percent of the gross vending machine proceeds. The "tax in gross" is a deduction against the gross amount of both retailing B&O and retail sales. The formula is:

$$(\text{gross machine proceeds} \times .57) \times \text{sales tax rate} = \text{tax in gross}$$

The remaining 43 percent of the gross vending machine proceeds, less the "tax in gross" amount, is reported as an exempt food sales deduction against retail sales proceeds only calculated as follows:

$$(\text{gross machine proceeds} \times .43) - \text{tax in gross} = \text{exempt food deduction}$$

(b) **Example.** Jane owns a vending machine business with machines in Spokane and Seattle. In each location, she has a vending machine selling candy and a second vending machine selling hot cocoa and coffee drinks. Her annual sales for the vending machines and the combined retail sales tax rates for Seattle and Spokane are as follows:

	Coffee Machine (cocoa & coffee)	Candy Machine	Combined Retail Sales Tax Rate
Seattle	\$2,500	\$10,000	.101
Spokane	\$3,000	\$6,000	.089

To determine the amount of retail sales tax she collected on the sale of cocoa and coffee (food dispensed in a heated state, subject to retail sales tax), Jane calculates the "tax in gross" deduction amount as follows:

gross machine proceeds - [(gross machine proceeds)/(1 + sales tax rate)] = tax in gross

$$\begin{array}{rcl} \$2,500 - (\$2,500 / 1.101) & = & \$229.34 \quad (\text{Seattle coffee machine}) \\ \$3,000 - (\$3,000 / 1.089) & = & \$245.18 \quad (\text{Spokane coffee machine}) \\ & & \hline & & \$474.52 \end{array}$$

Thus, for both retailing B&O and retail sales, Jane must report her total gross coffee machine proceeds of \$5,500 with a "tax in gross" deduction of \$474.52.

To determine the amount of retail sales tax she collected on the sale of candy, Jane calculates the "tax in gross" deduction amount as follows:

(gross machine proceeds x .57) x sales tax rate = tax in gross

$$\begin{array}{rcl} \$10,000 \times .57 \times .101 & = & \$575.70 \quad (\text{Seattle candy machine}) \\ \$6,000 \times .57 \times .089 & = & \$304.38 \quad (\text{Spokane candy machine}) \\ & & \hline & & \$880.08 \end{array}$$

Thus, for both retailing B&O and retail sales, Jane must report her total gross candy machine proceeds of \$16,000 with a "tax in gross" deduction of \$880.08.

Jane must also report an exempt food sales deduction representing the remaining 43 percent of the gross candy machine proceeds.

(43% x gross machine proceeds) - tax in gross = exempt food deduction

$$(.43 \times \$16,000) - \$880.08 = \$5999.92$$

Jane reports the exempt food sales deduction only against the gross amount of her retail sales. The deduction does not apply to retailing B&O.