

Rule 211 and Concrete Pumping Chronology

Date 11/20/2019

From Department of Revenue

Purpose Information Decision

Timeline	Date	Department Action	Notes
	1993		<ul style="list-style-type: none"> Legislature passed SB 5967 on 5/6/1993, which modified RCW 82.04.050(4) to include “the charge made for providing tangible personal property along with an operator” (“rental of equipment with operator” for short) in the statutory definition of a retail sale. The law went into effect on July 1, 1993.
	January 1996	The Department amended Rule 211 (WSR 96-03-139) to incorporate the 1993 law change. The Department’s position was that rental of equipment with an operator is presumed a retail sale. In addition, the Department added example 8(c) to Rule 211, clarifying that concrete pumping services are generally retail rental of equipment with an operator.	<ul style="list-style-type: none"> The Department held a public hearing in connection with this rule amendment in 1995. In this hearing, the Department clarified that it took the position that rental of equipment with operator is a “retail service,” rather than a rental of tangible personal property. The Department is trying to retrieve archived paper records on which stakeholders were notified for this rulemaking effort.
	Summer 1996	The Department added the following note (the “Concrete Pumper’s Note”) to Rule 211: THE DEPARTMENT HAS AGREED NOT TO APPLY THE PROVISIONS OF THIS RULE TO CONCRETE PUMPERS AT THIS TIME. CONCRETE PUMPERS WILL CONTINUE TO BE TREATED AS SUBCONTRACTORS WHEN WORKING FOR SOMEONE OTHER THAN A CONSUMER. 6/1/96.	<ul style="list-style-type: none"> The Concrete Pumper’s Note appears to be a result of industry representatives’ statements that they were not prepared to provide input during the rulemaking process. We are unable to locate the specific industry representatives who approached the Department. It appears that the Department added the Concrete Pumper’s Note to its version of Rule 211 only and a copy was not filed with the Code

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		<p>Reviser Office (CRO). Please note: CRO indicated that they did not start publishing WACs online until 2004. Instead, interested persons would have to get a paper copy of the Washington state register to see the WAC changes.</p> <ul style="list-style-type: none"> • It appears that the Department created the note with the intent to engage in further rulemaking specific to concrete pumping. No rulemaking activity followed until 2010.
January 2010	The Department updated its Construction Industry Guide to clarify that concrete pumpers should continue to report as “construction” services.	<ul style="list-style-type: none"> • As best as staff can determine, this update occurred on January 14, 2010.
February 2010	The Department amended Rule 211 (WSR 10-06-070) to replace the term “resale certificate” with “reseller permit”.	<ul style="list-style-type: none"> • When we adopted this expedited Rule 211 amendment, there was no Concrete Pumper’s Note in the header section. We presume it was at this time the note was removed from the Department’s version of the rule.
2016	The Department issued a Tax Topic article to clarify that concrete pumpers should continue to report as “construction” services.	<ul style="list-style-type: none"> • This appeared to have been the result of the industry asking for clarification on the tax treatment of concrete pumping services. This meant that retail construction contractors were able to use a reseller permit to purchase concrete pumping services for resale. This guidance contradicted both the statute and the Department’s rule. • The Department’s Taxpayer Services seems to recall that there were stakeholder efforts on the topic around this time. However, they have not been able to confirm whether and when those meetings or discussions occurred.
August 30, 2019	Given the conflicting guidance, the Department again analyzed the legal issues and issued a <u>prospective</u> interim guidance statement taking the position that, effective October 1, 2019, concrete	<ul style="list-style-type: none"> • No stakeholder work was conducted before sending out the interim guidance statement. • However, the Department did notify all stakeholders who are on the

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	<p>pumping services are retail services (not construction services).</p>	<p>agency’s excise tax distribution list for receiving notices on rulemaking and interpretative statement actions.</p> <ul style="list-style-type: none"> • The Department further made sure that the distribution list included: (1) Associated General Contractors of Washington; (2) Washington Aggregates & Concrete Association; (3) Independent Business Association of Washington; (4) National Federation of Independent Business; and (5) Association of Washington Business.
October 1, 2019	<p>To be consistent with the interim guidance, the Department pulled the Tax Topic article and the Construction Industry Guide on concrete pumping services, and started referring the public to the interim guidance statement.</p>	
October 30, 2019	<p>The Department held Rule 211 CR-101 public meeting and received substantive feedback.</p> <p>Currently, the Department is considering the feedback received.</p>	<p>Attendees were:</p> <ul style="list-style-type: none"> • Micah Silberman & Ross Carbo, Conco • Chad Drake, Corbett • Bruce Chattin, WA Aggregates & Concrete Association • Jeff Kron, Brundage Bone Concrete Pumping • Bill Henshaw, BBCP • Derald Ulmer, Procreate Concrete Pumping • Lee Roy Thompson & Caleb Thompason, Champion Concrete Pumping • Jim Kapelke, Reliable Concrete Pumping • Brett Young, Brundage-bone Concrete Pumping • Arv Zoerink, Western Concrete Pumping • Luke Hart & Eric Olson, Anderson Construction • Patty Power, ACPA • Ashlee Delaney & Jackson Maynard, BIAW • Mark Wittman, Ralph’s Concrete Pumping • Lori Thule, Miles Sand and Gravel • Fred Robinson’s office (name undisclosed)