



STATE OF WASHINGTON
DEPARTMENT OF REVENUE
OFFICE OF THE DIRECTOR

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November 21, 2019

The Honorable Shelly Short
State Senator
7th Legislative District

The Honorable Mark Schoesler
State Senator
9th Legislative District

The Honorable Mike Padden
State Senator
4th Legislative District

The Honorable Thomas Dent
State Representative
13th Legislative District

The Honorable Brian Blake
State Representative
19th Legislative District

The Honorable Mike Chapman
State Representative
24th Legislative District

Dear Legislators,

Thank you for your letter dated November 18, 2019 in which you expressed your opposition to the Department's current concrete pumping interim guidance and your request that the Department rescind the guidance.

After reviewing the enclosed chronology relating to this issue and on behalf of the Department of Revenue (Department), I sincerely apologize for the inconsistent guidance provided to taxpayers that stretches back to 1996.

In 1996, we adopted WAC 458-20-211 (Rule 211) to clarify that sales by concrete pumpers are subject to retail sale tax. However, we delayed enforcing this rule at the request of our stakeholders as reflected in a note added to Rule 211. At that time, we should have moved forward to promptly resolve any remaining issues and made clear that the information in the rule was, in fact, correct and in accordance with the law. However, we did not.

Our goal in issuing the prospective interim guidance this year was to be transparent with taxpayers about this issue. However, given the history of inconsistent guidance, the Department should have engaged in stakeholder work before sharing its position.

Effective Immediately

Effective immediately, the Department will:

- **Change the effective date of the interim guidance from October 1, 2019 to April 1, 2020 (still prospective application only). The new effective date is after the 2020 Legislative Session to honor several requests that the Department give the Legislature an opportunity to address the taxation of concrete pumping services.**

- **Make our resources available to draft legislation that reflects your desired tax treatment.**
- **Engage in stakeholder work between now and April 1, 2020 to gather additional facts and relevant information.**
- **Schedule another public meeting on Rule 211 after session begins but before session ends, to hear from stakeholders whether other examples should be included in the rule.**
- **Re-evaluate the efficacy and process of interim guidance going forward.**

The Agency's Position

The Department has chosen not to rescind the interim guidance and instead adopt a later effective date.

Based on a plain-reading of the statute, the agency's position is that charges for concrete pumping with an operator are subject to retail sales tax. The statute at issue is RCW [82.04.050\(9\)](#):


(9) The term ["sale at retail" or "retail sale"] also includes the charge made for providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (9), an operator must do more than maintain, inspect, or set up the tangible personal property.

Because the interim guidance follows the plain meaning of the statute, we believe that completely rescinding the guidance would send the wrong message and create additional confusion for taxpayers. We want to be transparent on our reading of the law, and delaying the interim guidance's effective date accomplishes this objective while affording the Legislature time to make a change and for stakeholders to provide additional feedback.

If you desire assistance in drafting legislation, we will need to confirm the tax treatment you desire. The agency's Legislative Liaison, David Duvall, is happy to assist. He can be reached at 360-534-1545 or by email at davidd@dor.wa.gov.

We hope you find this information helpful and responsive to your request.

Sincerely,



Vikki Smith
Director

Enclosure