



EXPEDITED RULE MAKING

CR-105 (July 2010)
(Implements RCW 34.05.353)
EXPEDITED RULE MAKING ONLY

Agency: Department of Revenue

Title of rule and other identifying information: WAC 458-20-104 (Rule 104) *Small business tax relief based on income of business* explains how the business and occupation (B&O) tax credit for small businesses, commonly referred to as the small business credit (SBC), is calculated. It also explains the public utility tax (PUT) income exemption for public utilities.

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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AND RECEIVED BY: November 1, 2010

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Department proposes to amend Rule 104 to reflect changes made in Chapter 23, section 1102, Laws of 2010, 1st Special Session. This legislation increased the small business B&O tax credit to a maximum of \$70 per month, but only for taxpayers whose B&O taxable amounts from activities taxable under RCW 82.04.255 (Real estate brokers), 82.04.290(2)(a) (Service and other activities tax classification), and 82.04.285 (Contests of chance) add up to 50% or greater of the total of all B&O taxable amounts reported on the return.

Rule 104 currently provides tax credit tables for monthly, quarterly, and annual filers eligible for a maximum credit of \$35 per month. Rather than add more tables reflecting the maximum \$70 per month credit, the Department is proposing to refer readers to the Department's internet page to view tax credit tables.

Copies of draft rules are available for viewing and printing on our website at:
<http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>

Reasons supporting proposal: To recognize 2010 legislation.

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

Statute being implemented:
RCW 82.32.030 and 82.32.045

Is rule necessary because of a:

| | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

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Date
August 30, 2010

Name
Alan R. Lynn

Signature

Title Rules Coordinator

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.

This rule draft is being proposed under an expedited rule-making process that does not require the agency to hold public hearings. Under no circumstances is this proposed rule to be used as a basis for determining tax liability or eligibility for a tax deduction, exemption, or credit.

AMENDATORY SECTION (Amending WSR 10-09-050, filed 4/15/10, effective 5/16/10)

WAC 458-20-104 Small business tax relief based on income of business. (1) **Introduction.** This rule explains the business and occupation (B&O) tax credit for small businesses provided by RCW 82.04.4451. This credit is commonly referred to as the small business B&O tax credit or small business credit (SBC). The amount of small business B&O tax credit available on a tax return can increase or decrease, depending on the reporting frequency of the account and the net B&O tax liability for that return. This rule also explains the public utility tax income exemption provided by RCW 82.16.040. The public utility tax exemption is a fixed amount, or threshold, based on the reporting frequency assigned to the account. Readers should refer to WAC 458-20-22801 (Tax reporting frequency--Forms) for an explanation of how the department of revenue (department) assigns a particular reporting frequency to each account. Readers may also want to refer to WAC 458-20-101 for an explanation of Washington's tax registration and tax reporting requirements.

This rule provides examples that identify a number of facts and then state a conclusion regarding the applicability of the income exemption for the public utility tax or small business B&O tax credit. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **The public utility tax income exemption.** Persons subject to public utility tax (PUT) are exempt from payment of this tax for any reporting period in which the gross taxable amount reported under the combined total of all public utility tax classifications does not equal or exceed the maximum exemption for the assigned reporting period. Per RCW 82.16.040, the public utility tax exemption amounts are:

| | |
|-----------------------------------|---------------------|
| for taxpayers reporting monthly | \$2,000 per month |
| for taxpayers reporting quarterly | \$6,000 per quarter |
| for taxpayers reporting annually | \$24,000 per annum |

(a) **What if the taxable income equals or exceeds the maximum exemption?** If the taxable income for a reporting period

equals or exceeds the maximum exemption, tax must be remitted on the full taxable amount.

(b) **How does the exemption apply if a business does not operate for the entire tax reporting period?** The public utility tax maximum exemptions apply to the entire tax reporting period, even though the business may not have operated during the entire period.

(c) **Do taxable amounts for B&O tax or other taxes affect this exemption?** The public utility tax exemption is not affected by taxable amounts reported in the B&O tax section or any of the other tax sections of the tax return.

(d) **Example((-)) - How is the public utility tax exemption applied?** Taxpayer registers with the department and is assigned a quarterly tax reporting frequency. Taxpayer begins business activities on February 1st. During the two months of the first quarter that the taxpayer is in business, taxpayer's public utility gross income is seven thousand dollars. After deductions provided by chapter 82.16 RCW (Public utility tax) are computed, the total taxable amount is five thousand dollars. In this case, the taxpayer does not owe any public utility tax because the taxable amount of five thousand dollars is less than the six thousand dollar exemption threshold for quarterly taxpayers. The fact that the taxpayer was in business during only two months out of the three months in the quarter has no effect on the threshold amount. However, if there were no deductions available to the taxpayer, the taxable amount would have been seven thousand dollars. The public utility tax would then have been due on the full taxable amount of seven thousand dollars.

(3) **The small business B&O tax credit.** Persons subject to the B&O tax may be eligible to claim a small business B&O tax credit against the amount of B&O tax otherwise due. The small business B&O tax credit operates completely independent of the public utility tax exemption described above in subsection (2) of this rule. RCW 82.04.4451 authorizes the department to create a tax credit table for use by all taxpayers when determining the amount of their small business B&O tax credit. Taxpayers must use the tax credit table to determine the appropriate amount of their small business B&O tax credit. A tax credit table for each of the monthly, quarterly, and annual reporting frequencies (~~is provided in subsection (7) of this rule.~~) can be found on the department's internet site at <http://dor.wa.gov>; or by contacting:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
800-647-7706

The statute provides that taxpayers who use the tables will

not owe any more tax than if they used the statutory credit formula to determine the amount of the credit.

Effective May 1, 2010, section 1102, chapter 23, Laws of 2010 1st sp. sess. amended RCW 82.04.4451. Prior to that amendment the small business credit was calculated at a maximum of thirty-five dollars multiplied by the number of months in the reporting period for all eligible taxpayers. As a result of the amendment, taxpayers who report at least fifty percent (i.e., fifty percent or greater) of their total B&O taxable amount under RCW 82.04.255 (real estate brokers), RCW 82.04.290 (2)(a) (service and other activities), and RCW 82.04.285 (contests of chance) have their maximum credit increased to seventy dollars multiplied by the number of months in the reporting period. (Just a few examples of businesses that generally have taxable amounts to report under RCW 82.04.290 (2)(a) are for-profit hospitals, for-profit research and development, accountants, attorneys, dentists, janitors, and landscape architects. Please see WAC 458-20-224, Service and other business activities for information and more examples of who should report under the service and other classification of the B&O tax.)

(a) How is the credit applied if a business does not operate during the entire tax reporting period? The small business B&O tax credit applies to the entire reporting period, even though the business may not have been operating during the entire period.

(b) Can a husband and wife or partners in a state registered domestic partnership both take the credit? Spouses or state registered domestic partners operating distinct and separate businesses are each eligible for the small business B&O tax credit. For both spouses or both domestic partners to qualify, each must have a separate tax reporting number and file his or her own business tax returns.

(c) How do I determine the amount of the credit? Taxpayers eligible for the small business B&O tax credit must follow the steps outlined in subsection (5) of this rule to determine the amount of credit available. Taxpayers who have other B&O tax credits to apply on a tax return, in addition to the small business B&O tax credit, may use the multiple B&O tax credit worksheet in subsection (4) of this rule before determining the amount of small business B&O tax credit available. (~~Subsection (7) of this rule contains the tax credit tables that correspond with the monthly, quarterly, and annual reporting frequencies.~~)

(d) Can I carryover the small business B&O tax credit to future tax reporting periods? Use of the small business B&O tax credit may not result in a B&O tax liability of less than zero, and thus there will be no unused credit.

(e) Do I have to report and pay retail sales tax even if I do not owe any B&O tax? Persons making retail sales must collect and pay all applicable retail sales taxes even if B&O

tax is not due. There is no comparable retail sales tax exemption.

(4) **Multiple business and occupation tax credit worksheet.** The small business B&O tax credit should be computed after claiming any other B&O tax credits available under Title 82 RCW (Excise taxes). Examples of other B&O tax credits to be taken before computing the small business B&O tax credit include the multiple activities tax credit, high technology credit, commute trip reduction credit, pollution control credit, and cogeneration fee credit. The following multiple B&O tax credit worksheet describes the process taxpayers must follow to apply credits in the appropriate order. Refer to subsection (6) of this rule for an example illustrating the use of the multiple B&O tax credit worksheet.

MULTIPLE B&O TAX CREDIT WORKSHEET

1. Determine the total Business and Occupation (B&O) tax due from the B&O section of your excise tax return. \$ _____
2. Add together the credit amounts taken for:

| | |
|---|------------|
| Multiple Activities Tax Credit from Schedule C (if applicable). | \$ _____ |
| (Add any other B&O tax credits from Title 82 RCW that will be applied to this return period.) | + \$ _____ |
| Total (Enter 0 if none of these credits are being taken.) | \$ _____ |
3. Subtract line 2 from line 1. This is the total B&O tax allowable for the Small Business Credit. \$ _____
4. Find the specific tax credit table (Table 1 or Table 2) appropriate for the business activities and B&O taxable amounts on your excise tax return. Next, find the tax credit table which matches the reporting frequency assigned to the account((, then find the total B&O tax due amount which includes your figure from item 3, above)). Then find the range of amounts which includes your total B&O tax due (see line three above).
5. Read across to the next column. This is the amount of the Small Business Credit to be used on the excise tax return. \$ _____

(5) **Using the tax credit table to determine your small business B&O tax credit.** The following steps explain how to use the small business B&O tax credit table:

(a) **Step one.** Determine the total B&O tax amount due from the excise tax return. This amount will normally be the total of the tax amounts due calculated for each classification in the B&O tax section of the excise tax return. However, if additional B&O tax credits will be taken on the return, refer to subsection (4) of this rule and the multiple B&O tax credit worksheet before going to step two.

(b) **Step two.** Find the B&O taxable amounts on the return reported under RCW 82.04.255 (real estate brokers), RCW 82.04.290 (2)(a) (service and other activities), and RCW 82.04.285 (contests of chance) then add them together. Divide that sum result by the total amount of all B&O taxable amounts reported on the return. If the result indicates less than fifty

percent of the total of all B&O taxable amounts came from activities reported under RCW 82.04.255, 82.04.290 (2)(a), and 82.04.285 combined, use Table 1 of the small business B&O tax credit table. If the result indicates fifty percent or greater of the total of all B&O taxable amounts came from activities reported under RCW 82.04.255, 82.04.290 (2)(a), and 82.04.285 combined, use Table 2 of the small business B&O tax credit table.

(c) **Step three.** Find the small business B&O tax credit table that matches the assigned reporting frequency (~~((i.e., the monthly table shown in subsection (7)(b) of this rule, the quarterly table in subsection (7)(c) of this rule, or the annual table in subsection (7)(d) of this rule))~~), monthly, quarterly, or annual.

~~((e))~~ (d) **Step ((three)) four.** Find the "If Your Total Business and Occupation Tax is" column of the tax credit table and come down the column until you find the range of amounts which includes the total B&O tax due figure obtained from the excise tax return or multiple B&O tax credit worksheet.

~~((d))~~ (e) **Step ((four)) five.** Read across to the "Your Small Business Credit is" column. The figure shown is the amount of the small business B&O tax credit that can be claimed on the "Small Business B&O Tax Credit" line in the "Credits" section of the excise tax return.

(6) **Examples - Using the "Multiple B&O Tax Credit Worksheet" and the tax credit tables.**

(a) **Using the "Multiple B&O Tax Credit Worksheet."** Assume that ABC reports quarterly. This quarter, ABC reports one hundred ninety dollars under the wholesaling classification and seventy dollars under the manufacturing classification for a total B&O tax liability of two hundred sixty dollars. ABC completes Schedule C, and determines it is entitled to a multiple activities tax credit (MATC) of seventy dollars. Using the multiple B&O tax credit worksheet, ABC enters two hundred sixty dollars on line one, enters seventy dollars on line two, and enters one hundred ninety dollars on line three (line two subtracted from line one). Line three, one hundred ninety dollars is the total B&O tax. ABC will use this amount to determine whether it is eligible for a small business B&O tax credit.

~~((7) **Tax credit tables.** Corresponding tax credit tables for the monthly, quarterly, and annual reporting frequencies appear below. Taxpayers must use the tax credit table that corresponds to their assigned reporting frequency to determine the correct amount of small business B&O tax credit available.~~

~~(a) **Example illustrating the use of the small business B&O tax credit tables.** The facts are the same as in the previous example in subsection (6) of this rule. After completing the multiple B&O tax credit worksheet, ABC has one hundred ninety~~

~~dollars of B&O tax liability left for potential application of the small business B&O tax credit. ABC refers to the quarterly small business B&O tax credit table, which is located below in subsection (7)(c) of this rule, and finds the "If Your Total Business and Occupation Tax is" column. Following down that column, ABC finds the tax range of one hundred eighty six to one hundred ninety one dollars and comes over to the "Your Small Business Credit is" column, which shows that a credit in the amount of twenty five dollars is available. Before calculating the total amount due for the tax return, ABC enters its small business B&O tax credit of twenty five dollars in the "Credits" section.~~

~~(b) **Monthly filers.** Persons assigned a monthly reporting frequency must use the following table to determine if they are eligible for a small business B&O tax credit.~~

| If Your Total Business and Occupation Tax is: | | Your Small Business Credit is: |
|--|---------------|---|
| At Least | But Less Than | |
| \$0 | \$36 | The Amount of Business and Occupation Tax Due |
| \$36 | \$41 | \$35 |
| \$41 | \$46 | \$30 |
| \$46 | \$51 | \$25 |
| \$51 | \$56 | \$20 |
| \$56 | \$61 | \$15 |
| \$61 | \$66 | \$10 |
| \$66 | \$71 | \$5 |
| \$71 | or more | \$0 |

~~(c) **Quarterly filers.** Persons assigned a quarterly reporting frequency must use the following table to determine if they are eligible for a small business B&O tax credit.~~

| If Your Total Business and Occupation Tax is: | | Your Small Business Credit is: |
|--|---------------|---|
| At least | But Less Than | |
| \$0 | \$106 | The Amount of Business and Occupation Tax Due |
| \$106 | \$111 | \$105 |
| \$111 | \$116 | \$100 |
| \$116 | \$121 | \$95 |

| | | |
|-------|---------|------|
| \$121 | \$126 | \$90 |
| \$126 | \$131 | \$85 |
| \$131 | \$136 | \$80 |
| \$136 | \$141 | \$75 |
| \$141 | \$146 | \$70 |
| \$146 | \$151 | \$65 |
| \$151 | \$156 | \$60 |
| \$156 | \$161 | \$55 |
| \$161 | \$166 | \$50 |
| \$166 | \$171 | \$45 |
| \$171 | \$176 | \$40 |
| \$176 | \$181 | \$35 |
| \$181 | \$186 | \$30 |
| \$186 | \$191 | \$25 |
| \$191 | \$196 | \$20 |
| \$196 | \$201 | \$15 |
| \$201 | \$206 | \$10 |
| \$206 | \$211 | \$5 |
| \$211 | or more | \$0 |

~~(d) **Annual filers.** Persons assigned an annual reporting frequency must use the following table to determine if they are eligible for a small business B&O tax credit.~~

| If Your Total Business and Occupation Tax is: | | Your Small Business Credit is: |
|--|----------------------|---|
| At Least | But Less Than | |
| \$0 | \$421 | The Amount of Business and Occupation Tax Due |
| \$421 | \$426 | \$420 |
| \$426 | \$431 | \$415 |
| \$431 | \$436 | \$410 |
| \$436 | \$441 | \$405 |
| \$441 | \$446 | \$400 |
| \$446 | \$451 | \$395 |
| \$451 | \$456 | \$390 |

| | | |
|-------|-------|-------|
| \$456 | \$461 | \$385 |
| \$461 | \$466 | \$380 |
| \$466 | \$471 | \$375 |
| \$471 | \$476 | \$370 |
| \$476 | \$481 | \$365 |
| \$481 | \$486 | \$360 |
| \$486 | \$491 | \$355 |
| \$491 | \$496 | \$350 |
| \$496 | \$501 | \$345 |
| \$501 | \$506 | \$340 |
| \$506 | \$511 | \$335 |
| \$511 | \$516 | \$330 |
| \$516 | \$521 | \$325 |
| \$521 | \$526 | \$320 |
| \$526 | \$531 | \$315 |
| \$531 | \$536 | \$310 |
| \$536 | \$541 | \$305 |
| \$541 | \$546 | \$300 |
| \$546 | \$551 | \$295 |
| \$551 | \$556 | \$290 |
| \$556 | \$561 | \$285 |
| \$561 | \$566 | \$280 |
| \$566 | \$571 | \$275 |
| \$571 | \$576 | \$270 |
| \$576 | \$581 | \$265 |
| \$581 | \$586 | \$260 |
| \$586 | \$591 | \$255 |
| \$591 | \$596 | \$250 |
| \$596 | \$601 | \$245 |
| \$601 | \$606 | \$240 |
| \$606 | \$611 | \$235 |
| \$611 | \$616 | \$230 |
| \$616 | \$621 | \$225 |

| | | |
|-------|-------|-------|
| \$621 | \$626 | \$220 |
| \$626 | \$631 | \$215 |
| \$631 | \$636 | \$210 |
| \$636 | \$641 | \$205 |
| \$641 | \$646 | \$200 |
| \$646 | \$651 | \$195 |
| \$651 | \$656 | \$190 |
| \$656 | \$661 | \$185 |
| \$661 | \$666 | \$180 |
| \$666 | \$671 | \$175 |
| \$671 | \$676 | \$170 |
| \$676 | \$681 | \$165 |
| \$681 | \$686 | \$160 |
| \$686 | \$691 | \$155 |
| \$691 | \$696 | \$150 |
| \$696 | \$701 | \$145 |
| \$701 | \$706 | \$140 |
| \$706 | \$711 | \$135 |
| \$711 | \$716 | \$130 |
| \$716 | \$721 | \$125 |
| \$721 | \$726 | \$120 |
| \$726 | \$731 | \$115 |
| \$731 | \$736 | \$110 |
| \$736 | \$741 | \$105 |
| \$741 | \$746 | \$100 |
| \$746 | \$751 | \$95 |
| \$751 | \$756 | \$90 |
| \$756 | \$761 | \$85 |
| \$761 | \$766 | \$80 |
| \$766 | \$771 | \$75 |
| \$771 | \$776 | \$70 |
| \$776 | \$781 | \$65 |
| \$781 | \$786 | \$60 |

| | | |
|-------|---------|-------|
| \$786 | \$791 | \$55 |
| \$791 | \$796 | \$50 |
| \$796 | \$801 | \$45 |
| \$801 | \$806 | \$40 |
| \$806 | \$811 | \$35 |
| \$811 | \$816 | \$30 |
| \$816 | \$821 | \$25 |
| \$821 | \$826 | \$20 |
| \$826 | \$831 | \$15 |
| \$831 | \$836 | \$10 |
| \$836 | \$841 | \$5 |
| \$841 | or more | \$0)) |

(b) Using the small business B&O tax credit tables. Assume the facts are the same as in the previous example in subsection (6)(a) of this rule. After completing the multiple B&O tax credit worksheet, ABC has one hundred ninety dollars of B&O tax liability left for potential application of the small business B&O tax credit. ABC does not have any business activity taxable under RCW 82.04.255 (real estate brokers), RCW 82.04.290 (2)(a) (service and other activities), and RCW 82.04.285 (contests of chance), so the ratio of those combined taxable amounts compared to the total of all B&O taxable amounts on the return is not fifty percent or greater. ABC will refer to Table 1 of the quarterly small business B&O tax credit table to find the "If Your Total Business and Occupation Tax is" column. Following down that column, ABC finds the tax range of one hundred eighty-six to one hundred ninety-one dollars and comes over to the "Your Small Business Credit is" column on the right, which shows that a credit in the amount of twenty-five dollars is available. Before calculating the total amount of tax due for the return, ABC enters its small business B&O tax credit of twenty-five dollars in the "Credits" section.