



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)
(Implements RCW 34.05.310)
Do NOT use for expedited rule making

Agency: Department of Revenue

Subject of possible rule making: WAC 458-20-151 (Rule 151) *Dentists and other health care providers, dental laboratories and dental technicians.*

Statutes authorizing the agency to adopt rules on this subject: RCW 82.32.300 and 82.01.060(2)

Reasons why rules on this subject may be needed and what they might accomplish: Rule 151 explains the application of business and occupation (B&O), retail sales, and use taxes to the business activities of dentists and other health care providers, dental laboratories, and dental technicians.

The Department is proposing to revise the rule to specifically provide taxability information for audiologists. Updating and some reorganization of the rule is proposed, as well as including the term "audiologists" in the revised title.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: None.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Parties interested in this rule making may contact the individual listed below. The public may also participate by providing written comments throughout this rule making or giving oral testimony at the public meeting or public hearing.

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:

A preliminary draft of possible rule changes is available via the Department's online [Rules Agenda](#).

Written comments may be submitted by mail and should be directed to Leslie Mullin at either of the following addresses: email: LeslieMu@dor.wa.gov, or mailing address: ITA Division, PO Box 47453, Olympia, WA 98504-7453.

Written and oral comments will be accepted at the public meeting.

Public meeting location:

Capitol Plaza Building
4th Floor Executive Conference Rm.
1025 Union Avenue SE
Olympia, Washington

Assistance for persons with disabilities:

Contact Mary Carol LaPalm (360) 725-7499 or Renee Cosare (360) 725-7514 no later than 10 days before the meeting date. For Hearing Impaired please contact us via the Washington Relay Operator at (800) 833-6384.

Call in option can be provided upon request no later than 3 days before the meeting date.

Date: May 5, 2016 **Time:** 10:00 A.M

Date
March 14, 2016

Name
Kevin Dixon

Signature

Title
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
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DATE: March 14, 2016
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WSR 16-07-053

AMENDATORY SECTION (Amending WSR 10-06-069, filed 2/25/10, effective 3/28/10)

WAC 458-20-151 Dentists, audiologists, and other health care providers~~((7))~~—Dental laboratories~~((7))~~ and dental technicians. (1)

Introduction. This rule explains the application of business and occupation (B&O), retail sales, and use taxes to the business activities of dentists ~~((and other health care providers))~~, audiologists, dental laboratories, ~~((and))~~ dental technicians~~((. For purposes of this rule, a "health care provider" is a person who is licensed under the provisions of Title 18 RCW to provide health care services to humans in the ordinary course of business or practice of a profession. The department of revenue (department) has adopted other rules dealing with the taxability of various activities relating to the provision of health care. Readers may want to refer to the following rules for additional information:))~~, and other health care providers.

(a) **Examples.** Examples found in this rule 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 facts and circumstances.

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

(i) WAC 458-20-102 Reseller permits;

(ii) WAC 458-20-150 ~~((+))~~Optometrists, ophthalmologists, and opticians~~((+))~~;

~~((b+))~~ (iii) WAC 458-20-168 ~~((+))~~Hospitals, nursing homes, ~~((boarding homes))~~ assisted living facilities, adult family homes and similar health care facilities~~((+))~~;

~~((e+))~~ (iv) WAC 458-20-178 Use tax and the use of tangible personal property; and

(v) WAC 458-20-18801 ~~((+))~~Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen); and

~~((d))~~ WAC 458-20-233 (Tax liability of medical and hospital service bureaus and associations and similar health care organizations)) Medical substances, devices, and supplies for humans—Drugs prescribed for human use—Medically prescribed oxygen—Prosthetic devices—Mobility enhancing equipment—Durable medical equipment.

(c) **Definitions.** For the purposes of this rule the following definitions apply:

(i) **Audiologists.** "Audiologists" diagnose, manage, and treat a patient's hearing, balance, or related ear problems.

(ii) **Gross income.** "Gross income" means compensation for the rendition of health care services, and includes any separate charge for drugs, medicines, and other substances administered or provided to a patient as part of the health care services delivered to the patient. Gross income also includes any separate charges for prosthetic devices, including dental prostheses and hearing aids that are provided as part of the health care services delivered to patients.

(iii) **Health care provider.** A "health care provider" is a person licensed under the provisions of Title 18 RCW to provide health care services to humans in the ordinary course of business or practice of a profession.

(iv) **Prosthetic device.** "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement

parts for a prosthetic device, worn on or in the body to artificially replace a missing portion of the body, prevent or correct a physical deformity or malfunction, or support a weak or deformed portion of the body. RCW 82.08.0283. Dental appliances, devices, restorations, substitutes, or other dental laboratory products are also referred to as "dental prostheses" throughout this rule.

(2) **Tax-reporting information for dentists, audiologists, and other health care providers.** This subsection provides specific tax-reporting information for dentists, audiologists, and more generalized tax-reporting information for other health care providers. Dentists who employ dental technicians to produce or fabricate dental appliances, devices, restorations, substitutes, or other dental laboratory products should refer to subsection (3)((b) and (d)) of this rule for additional information. (~~Dental appliances, devices, restorations, substitutes, or other dental laboratory products are also referred to as "dental prostheses" throughout this rule.~~

~~(a) **Taxability of dental and other health care services.**)~~

(a) **Business and occupation tax.** Dentists, audiologists, and other health care providers are subject to the service and other activities B&O tax on their gross income from performing dental and other health care services. (~~The term "gross income" includes any separate charge for drugs, medicines, and other substances administered or provided to a patient as part of the dental or other health care services delivered to the patient. "Gross income" also includes any separate charges for prosthetic devices, including dental prostheses, that are provided as part of the dental or other health care services delivered to patients.~~

~~For purposes of this rule, "prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for a prosthetic device, worn on or in the body to artificially replace a missing portion of the body, prevent or correct a physical deformity or malfunction, or support a weak or deformed portion of the body.)~~ RCW 82.04.290.

(b) **Sales of tangible personal property ((~~apart from dental and other health care services~~)).** A dentist, audiologist, or other health care provider may make sales of tangible personal property such as hearing aid batteries, drugs, medicines, and bandages as a convenience to a buyer apart from any health care services provided to the buyer. These are sales of tangible personal property only when the dentist, audiologist, or other health care provider does not supply or administer the drug, medicine, or other item in the course of delivering health care services to the buyer. The gross proceeds of these retail sales of tangible personal property are subject to the retailing B&O tax. In addition, the dentist, audiologist, or other health care provider must collect and remit retail sales tax, unless the sale is specifically exempt by law. (~~See WAC 458-20-18801~~) For detailed information regarding retail sales tax exemptions available for sales of items commonly associated with health care services refer to WAC 458-20-18801. Adequate records must be kept by the dentist, audiologist, or other health care provider to distinguish items of tangible personal property (~~that are~~) supplied or administered to patients as part of health care services from those (~~that are~~) sold apart from health care services delivered to the buyer.

Purchases of tangible personal property for resale without intervening use are not subject to the retail sales tax. A dentist, audiologist, or other health care provider purchasing tangible personal property for resale must furnish a (~~resale certificate for purchases~~

~~made before January 1, 2010, or a)) reseller permit ((for purchases made on or after January 1, 2010,)) to the seller to document the wholesale nature of the sale ((as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014)). For information on reseller permits, see WAC 458-20-102.~~

(c) **Equipment and supplies used by dentists, audiologists, and other health care providers.** Purchases of equipment and supplies used by dentists, audiologists, and other health care providers in performing diagnostic, dental, or other health care services are purchases at retail and subject to retail sales tax unless specifically exempt by law. If the seller does not collect retail sales tax, the dentist, audiologist, or other health care provider must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. Deferred sales or use tax ((should be reported on the buyer's excise tax return. However, the excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax)) liability should be reported on the use tax line of the buyer's excise tax return. For detailed information regarding the use tax, ((refer to)) see WAC 458-20-178 ((Use tax)).

Dental prostheses are exempt from retail sales and use taxes if the dental prosthesis meets the definition of "prosthetic device," ((in subsection (2)(a) of this rule. RCW 82.08.0283 and 82.12.0277.)) Exempt items include, but are not limited to, full and partial dentures, crowns, inlays, fillings, braces, retainers, collars, wire, screws, bands, splints, night guards, gold, silver, alloys, acrylic materials, filling material, relining material, cement, cavity liners, pins, and endo posts.

(d) **Itemization of gross income.** Audiologists who itemize invoices to their patients showing charges for tests and evaluations separate from charges for sales of hearing aids may separately report their income under the service and other activities B&O tax classification and the retailing B&O tax classification, respectively. Audiologists who do not separately charge for their services and sales of hearing aids must report their gross income under the service and other activities B&O tax classification.

(e) **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.** Dr. A is a physician who specializes in the treatment of allergies. Dr. A treats many patients with injections of allergy extracts (antigens). Dr. A separately itemizes the charges for the antigen, the administration of the injection, and the office call in patients' billings. Dr. A is subject to service and other activities B&O tax on the entire charge for the antigen, administration of the injection, and office call. Even though Dr. A separately itemizes the charges for antigens, these are not retail sales because Dr. A administers the antigens to the patients.

(ii) **Example 2.** Dr. B made mail-order purchases of a computer, books, and magazines for use in Dr. B's dental practice. Dr. B did not pay retail sales tax to the sellers on these purchases. Therefore, Dr. B must remit to the department deferred retail sales or use tax on the computer, books, and magazines.

(3) **Tax-reporting information for dental laboratories and dental technicians.** This subsection provides tax-reporting information for dental laboratories and dental technicians.

(a) **Producing or fabricating dental prostheses for sale.** The production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by dental laboratories and dental technicians is a manufacturing activity. RCW 82.04.120. Thus, dental laboratories and dental technicians are subject to manufacturing B&O tax on the value of the dental prostheses they manufacture. The value of products manufactured is generally the gross proceeds of sales of such manufactured products. For additional information about the manufacturing B&O tax, ~~((refer to))~~ see WAC 458-20-136 ~~((Manufacturing, processing for hire, fabricating))~~.

(i) **Sales of dental prostheses manufactured by dental laboratories and dental technicians.** Dental laboratories and dental technicians ~~((who))~~ that make sales within this state of dental prostheses they have manufactured are subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases, the dental laboratory or dental technician must report under the manufacturing B&O tax classification as well as the wholesaling ~~((and/or))~~ or retailing B&O tax classification ~~((s))~~. However, a multiple activities tax credit (MATC) may be claimed. For detailed information about the MATC, ~~((refer to))~~ see WAC 458-20-19301 ~~((Multiple activities tax credits))~~. Dental laboratories or dental technicians making wholesale sales must obtain a ~~((resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or a))~~ reseller permit ~~((WAC 458-20-102) for sales made on or after January 1, 2010,))~~ from the buyer to document the wholesale nature of the sale.

As noted ~~((above))~~ in subsection (2)(c) of this rule, sales of dental prostheses including, but not limited to, full and partial dentures, crowns, inlays, fillings, braces, and retainers are exempt from retail sales tax if the dental prosthesis meets the definition of a "prosthetic device." ~~((in subsection (2)(a) of this rule. RCW 82.08.0283.))~~

(ii) **Dental casts, models, and other articles of tangible personal property manufactured by dental laboratories and dental technicians for commercial or industrial use.** Dental laboratories and dental technicians may manufacture dental casts, models, or other articles of tangible personal property that they use ~~((in producing or fabricating))~~ to produce or fabricate dental prostheses. In such cases, the dental laboratory or dental technician is manufacturing a product for commercial or industrial use and is subject to the manufacturing B&O tax on the value of the dental cast, model, or other article of tangible personal property. ~~((See WAC 458-20-112 (Value of products))~~ For information regarding the value of products ~~((-))~~, see RCW 82.04.450 and WAC 458-20-112. As the consumer of the dental cast, model, or other article of tangible personal property manufactured for commercial or industrial use, the dental laboratory or dental technician is also liable for use tax on the value of the dental cast, model, or other article of tangible personal property, unless the use is specifically exempt by law.

(b) **In-house manufacturing of dental prostheses by dentists.** As noted in this rule, the production or fabrication of dental prostheses by dental laboratories and dental technicians is a manufacturing activity. However, the production or fabrication of dental prostheses by dentists in the course of providing dental care services to their patients is not a manufacturing activity under the law and, therefore,

manufacturing B&O tax does not apply to ~~((this))~~ that activity. A dentist may personally produce or fabricate dental prostheses, or the dentist may have an employee who is a dental technician produce or fabricate the dental prostheses. These dental prostheses are considered a tangible representation of professional services provided to the dentist's patients. Dentists who manufacture impressions, dental casts, models, or other articles of tangible personal property that they use ~~((in producing or fabricating))~~ to produce or fabricate dental prostheses should refer to subsection (3)(a)(ii) of this rule for tax reporting instructions applicable to this activity.

~~((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 3.** Jane Doe, an employee of Dentist A, fabricates dental prostheses. Dentist A provides these products to patients in the course of rendering dental care services. Dentist A is subject to service and other activities B&O tax on the gross income received for providing dental care services, including any charge for the dental prostheses even if Dentist A separately charges patients for the dental prostheses. ~~((See subsection (2)(a) of this rule.))~~

(ii) **Example 4.** The facts are the same as in the previous example except that Dentist A also sells to Dentist B dental prostheses produced by Jane Doe in the course of Jane's employment with Dentist A. For these sales of dental prostheses to Dentist B, Dentist A is acting as a dental laboratory and, therefore, is liable for both manufacturing B&O tax and retailing B&O tax with respect to the manufacture and sale of dental prostheses to Dentist B. Dentist A may also claim a MATC ~~((+)).~~ See subsection (3)(a) and (a)(i) of this rule. ~~((+))~~ The sales to Dentist B are exempt from retail sales tax under RCW 82.08.0283 if the items qualify as a "prosthetic device" as defined ~~((above))~~ in subsection ~~((+2)(a))~~ (1)(c)(iv) of this rule.

(c) **Equipment and supplies used by dental laboratories and dental technicians.** Purchases of equipment and supplies by dental laboratories and dental technicians for use in manufacturing dental prostheses are generally purchases at retail and subject to retail sales tax unless specifically exempt by law. If the seller does not collect retail sales tax, the dental laboratory or dental technician must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. Deferred sales or use tax should be reported on the ~~((buyer's excise tax return. However, the excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the))~~ use tax line of the buyer's excise tax return. For detailed information regarding use tax, ~~((refer to))~~ see WAC 458-20-178.

(i) **Components of dental prostheses produced for sale.** Purchases of supplies that become components of dental prostheses ~~((that are))~~ produced for sale are purchases at wholesale and are not subject to retail sales tax, if the buyer provides the seller with a ~~((properly completed resale certificate (WAC 458-20-102A) for purchases made before January 1, 2010, or a))~~ reseller permit ~~((WAC 458-20-102) for purchases made on or after January 1, 2010,))~~ to document the wholesale nature of the transaction.

(ii) **Example 5.** ~~((The following example identifies a number of facts and then states a conclusion. This example should be used only as a general guide. The tax results of other situations must be deter-~~

~~mined after a review of all of the facts and circumstances.))~~ A dental lab purchases equipment and supplies including gold, silver, alloys, artificial teeth, cement, and tools. The purchases of gold, silver, alloys, artificial teeth, and cement that become components of dental prostheses are wholesale purchases and are not subject to retail sales tax if the buyer provides the seller with a ~~((resale certificate (WAC 458-20-102A) for purchases made before January 1, 2010, or a))~~ reseller permit ~~((WAC 458-20-102) for purchases made on or after January 1, 2010))~~. The tools are subject to retail sales or use tax unless they qualify for the manufacturing machinery and equipment sales and use tax exemptions. Additional information about ~~((this))~~ these exemptions is provided ~~((below))~~ in subsection (3)(d) of this rule.

(d) Sales and use tax exemptions for manufacturing machinery and equipment. ~~((A))~~ RCW 82.08.02565 and 82.12.02565 provide retail sales and use tax exemptions ~~((is provided by RCW 82.08.02565 and 82.12.02565))~~ for sales to or use by manufacturers of certain machinery and equipment used directly in a manufacturing operation. ~~((This exemption is))~~ These exemptions are limited to machinery and equipment used to manufacture products for sale as tangible personal property. Thus, dental laboratories and dental technicians manufacturing dental prostheses for sale may be eligible for ~~((this))~~ these exemptions. The ~~((exemption is))~~ exemptions are not available if these products are produced or fabricated by a dentist or an employee of a dentist and are provided to patients in the course of delivering dental care services to the patients (as is the case in ~~((the example provided in subsection (3)(b)(i) of this rule). Refer to WAC 458-20-13601 (Manufacturers and processors for hire Sales and use tax exemption for machinery and equipment))~~ Example 3). See WAC 458-20-13601 for detailed information regarding ~~((this))~~ these exemptions.