



EXPEDITED RULE MAKING

CR-105 (June 2004)
(Implements RCW 34.05.353)
EXPEDITED RULE MAKING ONLY

Agency: Department of Revenue

Title of rule and other identifying information:

WAC 458-20-162 (Rule 162) *Stockbrokers and security houses* explains the business and occupation (B&O) tax-reporting responsibilities of stockbrokers and security houses.

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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Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The Department proposes to amend Rule 162 to recognize that these stock brokers and security houses engaging in business in multiple states must apportion income for purposes of determining their B&O tax reporting responsibilities. For periods on and after June 1, 2010, the proposed changes refer readers to WAC 458-20-19402 *Single factor receipts apportionment – Generally*. For periods prior to June 1, 2010, the proposed rule refers readers to WAC 458-20-194 *Doing business inside and outside the state*.

Reasons supporting proposal: To update the rule to recognize provisions of 2ESSB 6143 (chapter 23, Laws of 2010, 1st sp. sess.

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

Statute being implemented:
RCW 82.04.460

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:

CODE REVISER USE ONLY

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Name
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Signature

Title Rules Coordinator

Name of proponent: Department of Revenue

Private
 Public
 Governmental

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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 Order ET 83-16, filed 3/15/83)

WAC 458-20-162 Stockbrokers and security houses. (1)
Introduction. With respect to stockbrokers and security houses, "gross income of the business" means the total of gross income from earnings accounts, specifically gross income from interest, gross income from commissions, gross income from trading, and gross income from all other sources~~((+))~~. Provided~~((+))~~ that:
~~((+1))~~ (a) Gross income from each account is to be computed separately and on a monthly basis;
~~((+2))~~ (b) Loss sustained upon any earnings account may not be deducted from or offset against gross income upon any other account, nor may a loss sustained upon any earnings account during any month be deducted from the gross income upon any account for any other month;
~~((+3))~~ (c) No deductions are allowed on account of salaries or commissions paid to employees or salesmen, rent, or any other overhead or operating expenses paid or incurred, or on account of losses other than under ~~((+2" above))~~ (b) of this subsection;
~~((+4))~~ (d) No deductions are allowed from commissions received from sales of securities which are delivered to buyers outside the state of Washington.
(2) **Gross income from interest.** Gross income from interest includes all interest received upon bonds or other securities held for sale or otherwise, ~~((excepting only))~~ except direct obligations of the federal government and of the state of Washington. No deduction is allowed for interest paid out even though such interest may have been paid to banks, clearing houses or others upon amounts borrowed to carry debit balances of customers' margin accounts.
Interest accrued upon bonds or other securities sold ~~((shall))~~ must be included in gross income where such interest is carried in an interest account and not as part of the selling price. Conversely, interest accrued upon bonds or other securities at the time of purchase may be deducted from gross income where such interest is carried in an interest account and not as a part of the purchase price.
(3) **Gross income from commissions.** Gross income from commissions is the amount received as commissions upon transactions for the accounts of customers over and above the amount paid to other established security houses associated in

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such transactions: Provided, however, That no deduction or offset is allowed on account of salaries or commissions paid to salesmen or other employees.

(4) Gross income from trading. Gross income from trading is the amount received from the sale of stocks, bonds and other securities over and above the cost or purchase price of such stocks, bonds and other securities. In the case of short sales gross earnings (~~shall~~) must be reported in the month during which the transaction is closed, that is, when the purchase is made to cover such sales or the short sale contract is forfeited.

(5) Gross income from all other sources. Gross income from all other sources includes all income received by the taxpayer, other than from interest, commissions and trading, such as dividends upon stocks, fees for examinations, fees for reorganizations, etc.

(6) Services inside and outside the state-apportionment. ~~Stockbrokers and security houses ((rendering services and maintaining places of business both inside and outside the state may, in computing tax, apportion to this state that portion of the gross income which is derived from services rendered or activities conducted inside this state. Where such apportionment cannot be made accurately by separate accounting methods, the taxpayer shall apportion to this state that portion of his total income which the cost of doing business inside the state bears to the total cost of doing business both inside and outside the state.))~~ engaging in business in multiple states are required to apportion income for B&O tax purposes.

(a) For periods on and after June 1, 2010. Effective June 1, 2010, RCW 82.04.460 requires that any person, including stockbrokers and security houses, earning apportionable income subject to B&O tax, and who is also taxable in another state, must apportion to this state that portion of the person's apportionable income from business activities pursuant to WAC 458-20-19402.

(b) For periods prior to June 1, 2010. RCW 82.04.460 authorized apportionment of income by either a separate accounting method or cost apportionment. (See WAC 458-20-194.)