



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Revenue

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: WAC 458-20-166 (Rule 166) explains the taxation of persons who provide lodging and related services to transients for a charge.

The Department amended Rule 166 to recognize recent legislation:

- Chapter 15, Laws of 2010 1st Sp. Session (SSB 6889) – This legislation authorizes the transfer of the King County Convention and Trade Center to a public facilities district; and
- Chapter 563, Laws of 2009 (SB 6173) – This legislation replaces the resale certificate with the reseller permit as the means by which to document a wholesale sale.

The Department also updated the rule to:

- Recognize the current statutory language regarding when the furnishing of lodging for a continuous period of one month or more is presumed to be a rental or lease of real property;
- Remove obsolete language regarding purchases made using US Govt. credit cards. The rule now refers readers to the Department’s internet site for current information regarding the types of credit cards used by the federal government;
- Update language to reflect current statutory terminology regarding self-service laundry facilities; and
- Add language to recognize that current law authorizes a tourism promotion area charge (chapter 35.101 RCW).

Citation of existing rules affected by this order:

Amended: WAC 458-20-166 (Rule 166) *Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.*

Statutory authority for adoption: RCW 82.32.300 and 82.01.060

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 10-17-114 on August 18, 2010 .

Describe any changes other than editing from proposed to adopted version: **None**

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: **An analysis was not prepared.**

Date adopted: October 29, 2010

NAME

Alan R. Lynn

SIGNATURE

TITLE

Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 29, 2010

TIME: 2:33 PM

WSR 10-22-067

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	<u>1</u>	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	<u>1</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

This rule was adopted on October 29, 2010 and becomes effective November 29, 2010. It may be used to determine tax liability on and after the effective date, until the codified version is available from the code reviser's office.

AMENDATORY SECTION (Amending WSR 94-05-001, filed 2/2/94, effective 3/5/94)

WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc. (1)

Introduction. This section explains the taxation of persons operating establishments such as hotels, motels, and bed and breakfast facilities, which provide lodging and related services to transients for a charge. In addition to retail sales tax and business and occupation (B&O) tax, this section explains the special hotel/motel tax, the convention and trade center tax, the tourism promotion area charge, and the taxation of emergency housing furnished to the homeless.

(a) In addition to persons operating hotels or motels, this section applies to persons operating the following establishments:

(i) Trailer camps and recreational vehicle parks which charge for the rental of space to transients for locating or parking house trailers, campers, recreational vehicles, mobile homes, tents, etc.

(ii) Educational institutions which sell overnight lodging to persons other than students. See WAC 458-20-167, Educational institutions, school districts, student organizations, and private schools.

(iii) Private lodging houses, dormitories, bunkhouses, etc., operated by or on behalf of business and industrial firms or schools solely for the accommodation of employees of such firms or students which are not held out to the public as a place where sleeping accommodations may be obtained. As will be discussed more fully below, in some circumstances these businesses may not be making retail sales of lodging.

(iv) Guest ranches or summer camps which, in addition to supplying meals and lodging, offer special recreation facilities and instruction in sports, boating, riding, outdoor living, etc. In some cases these businesses may not be making retail sales, as discussed below.

(b) This section does not apply to persons operating the following establishments:

(i) Hospitals, sanitariums, nursing homes, rest homes, and similar institutions. Persons operating these establishments should refer to WAC 458-20-168, Hospitals, nursing homes, boarding homes, adult family homes and similar health care

facilities.

(ii) Establishments such as apartments or condominiums where the rental is for longer than one month. See WAC 458-20-118, Sale or rental of real estate, license to use real estate for the distinction between a rental of real estate and the license to use real estate.

(2) **Transient defined.** The term "transient" as used in this section means any guest, resident, or other occupant to whom lodging and other services are furnished under a license to use real property for less than one month, or less than thirty continuous days if the rental period does not begin on the first day of the month. ~~((An occupant remaining in continuous occupancy for thirty days or more is considered a nontransient upon the thirtieth day. An occupant who contracts in advance and does remain in continuous occupancy for the initial thirty days will be considered a nontransient from the start of the occupancy.))~~ The furnishing of lodging for a continuous period of one month or more to a guest, resident, or other occupant is a rental or lease of real property. It is presumed that when lodging is furnished for a continuous period of one month or more, or thirty continuous days or more if the rental period does not begin on the first day of the month, the guest, resident, or other occupant purchasing the lodging is a nontransient upon the thirtieth day without regard to a specific lodging unit occupied throughout the continuous thirty-day period. An occupant who contracts in advance and does remain in continuous occupancy for the initial thirty days will be considered a nontransient from the first day of occupancy provided in the contract.

(3) **Business and occupation tax (B&O).** Where lodging is sold to a nontransient, the transaction is a rental of real estate and exempt from B&O tax. (See RCW 82.04.390.) Sales of lodging and related services to transients are subject to B&O tax, including transactions which may have been identified or characterized as membership fees or dues. ~~((See WAC 458-20-114.))~~ The B&O tax applies as follows:

(a) **Retailing.** Amounts derived from the following charges to transients are retail sales and subject to the retailing B&O tax: Rental of rooms for lodging~~(())~~; rental of radio and television sets~~((coin operated laundries))~~; rental of rooms, space, and facilities not for lodging, such as ballrooms, display rooms, meeting rooms, etc.~~(())~~; automobile parking or storage~~(())~~; and the sale or rental of tangible personal property at retail. See "retail sales tax" below for a more detailed explanation of the charges included in the retailing classification.

(b) **Service and other business activities.** Commissions, amounts derived from accommodations not available to the public, and certain unsegregated charges are taxable under this

classification.

(i) Hotels, motels, and similar businesses may receive commissions from various sources which are generally taxable under the service and other business activities classification. The following are examples of such commissions:

(A) Commissions received from acting as a laundry agent for guests when someone other than the hotel provides the laundry service ((+)). See WAC 458-20-165((+)), Laundry, dry cleaning, linen and uniform supply, and self-service and coin-operated laundry services.

(B) Commissions received from telephone companies for long distance telephone calls where the hotel or motel is merely acting as an agent (WAC 458-20-159, Consignees, bailees, factors, agents and auctioneers) and commissions received from coin-operated telephones (WAC 458-20-245, Telephone business, telephone service). Refer to the retail sales tax subsection below for a further discussion of telephone charges.

(C) Commissions or license fees for permitting a satellite antenna to be installed on the premises or as a commission for permitting a broadcaster or cable operator to make sales to the guest of the hotel or motel.

(D) Commissions from the rental of videos for use by guests of the hotel or motel when the hotel or motel operator is clearly making such sales as an agent for a seller.

(E) Commissions received from the operation of amusement devices. ((+))See WAC 458-20-187, Coin operated vending machines, amusement devices and service machines.((+))

(ii) Taxable under this classification are amounts derived from the rental of sleeping accommodations by private lodging houses, and by dormitories, bunkhouses, etc., operated by or on behalf of business and industrial firms and which are not held out to the public as a place where sleeping accommodations may be obtained.

(iii) Summer camps, guest ranches and similar establishments making an unsegregated charge for meals, lodging, instruction and the use of recreational facilities must report the gross income from such charges under the service and other business activities classification.

(iv) Deposits retained by the business as a penalty charged to a customer for failure to timely cancel a reservation is taxable under the service and other business activities classification.

(4) **Retail sales tax.** Persons providing lodging and other services generally must collect retail sales tax on their charges for lodging and other services as discussed below. They must pay retail sales or use tax on all of the items they purchase for use in providing their services.

(a) **Lodging.** All charges for lodging and related services to transients are retail sales. Included are charges for

vehicle parking and storage and for space and other facilities, including charges for utility services, in a trailer camp.

(i) An occupant who does not contract in advance to stay at least thirty days does not become entitled to a refund of retail sales tax where the rental period extended beyond thirty days. For example, a tenant rents the same motel room on a weekly basis. The tenant is considered a transient for the first twenty-nine days of occupancy and must pay retail sales tax on the rental charges. The rental charges become exempt of retail sales tax beginning on the thirtieth day. The tenant is not entitled to a refund of retail sales taxes paid on the rental charges for the first twenty-nine days.

(ii) A business providing transient lodging must complete the "transient rental income" information section of the combined excise tax return. The four digit location code must be listed along with the income received from transient lodging subject to retail sales tax for each facility located within a participating city or county.

(b) **Meals and entertainment.** All charges for food, beverages, and entertainment are retail sales.

(i) Charges for related services such as room service, banquet room services, and service charges and gratuities which are agreed to in advance by customers or added to their bills by the service provider are also retail sales.

(ii) In the case of meals sold under a "two meals for the price of one" promotion, the taxable selling price is the actual amount received as payment for the meals.

(iii) Meals sold to employees are also subject to retail sales tax. See WAC 458-20-119, Sales of meals for retail sales tax applicability on meals furnished to employees.

(iv) Sale of food and other items sold through vending machines are retail sales. See WAC 458-20-187, Coin operated vending machines, amusement devices and service machines for reporting income from vending machine sales and WAC 458-20-244, Food and food ingredients for the distinction between taxable and nontaxable sales of food products.

(v) Except for guest ranches and summer camps, when a lump sum is charged for lodging to nontransients and for meals furnished, the retail sales tax must be collected upon the fair selling price of such meals. Unless accounts are kept showing the fair selling price, the tax will be computed upon double the cost of the meals served. The cost includes the price paid for food and drinks served, the cost of preparing and serving meals, and all other costs incidental thereto, including an appropriate portion of overhead expenses.

(vi) Cover charges for dancing and entertainment are retail sales.

(vii) Charges for providing extended television reception to guests are retail sales.

(c) **Laundry services.** Charges for laundry services provided by a hotel/motel in the hotel's name are retail sales. (~~RCW 82.04.050, which defines retail sales, was amended by chapter 25, Laws of 1993 sp.s. to include charges for the use of coin operated laundry facilities located in hotels, motels, rooming houses, and trailer camps for the exclusive use of the tenants. This change became effective July 1, 1993. Prior to that date income from~~) Charges to tenants for ((coin-operated)) self-service laundry facilities ((was)) are not retail sales. These charges are subject to service B&O tax.

(d) **Telephone charges.** Telephone charges to guests, except those subject to service B&O tax as discussed above and in WAC 458-20-245, Telephone business, telephone service, are retail sales. "Message service" charges are also retail sales.

If the hotel/motel is acting as an agent for a telephone service provider who provides long distance telephone service to the guest, the actual telephone charges are not taxable income to the hotel/motel. These amounts are advances and reimbursements ((+)). See WAC 458-20-111, Advances and reimbursements and 458-20-159((+)), Consignees, bailees, factors, agents and auctioneers. Any additional handling or other charge which the hotel/motel may add to the actual long distance telephone charge is a retail sale.

(e) **Telephone lines.** If the hotel/motel leases telephone lines and then provides telephone services for a charge to its guests, these charges are taxable as retail sales. In this case the hotel/motel is in the telephone business. ((+)) See WAC 458-20-245, Telephone business, telephone service.((+)) The hotel/motel may give 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 provider of the leased lines and is not subject to the payment of retail sales tax to the provider of the leased lines. Previously accepted resale certificates must be kept on file by the seller for five years from the date of last use or no longer than December 31, 2014.

(f) **Rentals.** Rentals of tangible personal property such as movies and sports equipment are retail sales.

(g) **Purchases of tangible personal property for use in providing lodging and related services.** All purchases of tangible personal property for use in providing lodging and related services are retail sales. The charge for lodging and related services is for services rendered and not for the resale of any tangible property.

(i) Included are such items as beds and other furnishings, restaurant equipment, soap, towels, linens, and laundry supply services. Purchases, such as small toiletry items, are included even though they may be provided for guests to take home if not used.

(ii) The retail sales tax does not apply to sales of food

products to persons operating guest ranches and summer camps for use in preparing meals served to guests. Sales of prepared meals or other prepared items (~~(which require a food handler's permit)~~) to persons operating guest ranches and summer camps are subject to retail sales tax. See WAC 458-20-244, Food and food ingredients for sales of food products.

(h) **Sales to the United States government.** Sales made directly to the United States government are not subject to retail sales tax. Sales to employees of the federal government are fully taxable notwithstanding that the employee ultimately will be reimbursed for the cost of lodging. (~~The department of revenue has identified the following methods of billing or payment which are presumed to be sales directly to the federal government:~~)

(i) **Payment by government voucher or check.** If the lodging is paid by United States government voucher or United States government check payable directly to the hotel/motel, the sale is presumed to be a tax-exempt sale directly to the federal government.

~~((ii) Charges made through the use of a VISA I.M.P.A.C. card (International merchant purchase authorization card). The VISA I.M.P.A.C. cards include the embossed legend "U.S. Government Tax Exempt." The account number on each card begins with the prefix "4716."~~

~~(iii) For periods prior to November 30, 1993, charges made through Diner's Club Corporate Charge Card (the card contains the statement "for official use only"). There were two Diner's Club Corporate Charge Cards available to federal employees. Only one was sales tax exempt. The card providing the exemption was embossed with the name of the employee followed by the statement "for official use only." This card was used by federal agencies to pay for group lodging. The Diner's Club card program for federal employees ended November 29, 1993.~~

~~(iv) Beginning November 30, 1993, charges made through the use of certain American Express charge cards issued for the use of federal government travelers. Only those cards directly charging a government travel account (central bill account) qualify for the exemption. These cards begin with an account number prefix of "3783 9."~~

~~(v) A cash purchase made on behalf of the federal government by a federal employee who gives the seller a federal standard form SF 1165. A cash purchase by a federal employee made on behalf of the federal government qualifies for a sales tax exemption provided that the federal employee presents a federal standard form SF 1165 to document the fact that the purchase is made on behalf of the federal agency out of petty cash funds. The vendor (hotel/motel) is required to sign form SF 1165 to signify receipt of cash for the purchase. The vendor must retain a photocopy of SF 1165, describing the item~~

~~purchased, to document the sales tax exemption.))~~ (ii) **Charges to government credit card.** Various United States government contracted credit cards are used to make payment for purchases of goods and services by or for the United States government. Specific information about determining when a purchase by government credit card is a tax-exempt purchase by the United States government is available via the department's internet web site at <http://dor.wa.gov>. (See the department's lodging industry guide.) For specific information about determining when payment is the direct responsibility of the United States government or the employee, you may contact the department's taxpayer services division at <http://dor.wa.gov/content/ConactUs/> or:

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

(5) **Special hotel/motel tax.** (~~Beginning in October 1987,~~) Some locations in the state (~~have been authorized to~~) charge a special hotel/motel tax. (See chapters 67.28 and 36.100 RCW.) If a business is in one of these locations, an additional tax is charged and reported under the special hotel/motel portion of the tax return. The four digit location code, the amount received for the lodging, and the tax rate must be completed for each location in which the lodging is provided. The tax applies without regard to the number of lodging units except that the tax of chapter 36.100 RCW applies only if there are forty or more lodging units. The tax only applies to the charge for the rooms to be used for lodging by transients. Additional charges for telephone services, laundry, or other incidental charges are not subject to the special hotel/motel tax. Neither is the charge for use of meeting rooms, banquet rooms, or other special use rooms subject to this tax. However, the tax does apply to charges for use of camping and recreational vehicle sites.

(6) **Convention and trade center tax.** Businesses selling lodging to transients, having sixty or more units located in King County, must charge their customers the convention and trade center tax and report the tax under the "convention and trade center" portion of the tax return. (~~See RCW 67.40.090.~~)

(a) A business having more than sixty units which are rented to transients and nontransients will be subject to the convention and trade center tax only if the business has at least sixty rooms which are available or being used for transient lodging. For example, a business with one hundred forty total rooms of which ninety-five are rented to nontransients is not subject to the convention and trade center tax.

(b) The tax only applies to the charge for the rooms to be used for lodging by transients. Additional charges for

telephone services, laundry, or other incidental charges are not subject to the convention and trade center tax. (~~Neither is the~~) Charges for the use of meeting rooms, banquet rooms, or other special use rooms are also not subject to the convention and trade center tax. However, the tax does apply to charges for camping or recreational vehicle sites. Each camp site is considered a single unit.

(c) The four digit location code, amount received for the lodging, and the tax rate must be completed for each location in which the lodging is provided. (~~However, the tax does apply to charges for camping or recreational vehicle sites. Each camp site is considered a single unit.~~

~~(7))~~ (d) If the property of the King County state convention and trade center is transferred to a King County public facilities district created as provided in RCW 36.100.010, the authority under chapter 67.40 RCW of the state and city to impose the convention and trade center tax will be transferred under RCW 36.100.040 to the public facilities district.

(7) Tourism promotion area charge. A legislative authority as defined by RCW 35.101.010, Definitions may impose a charge on the furnishing of lodging by a lodging business located in the tourism promotion area, except that this tourism promotion area charge does not apply to temporary medical housing exempt under RCW 82.08.997, Exemptions--Temporary medical housing. The tourism promotion area charge is administered by the department of revenue and must be collected by lodging businesses from those persons who are subject to retail sales tax on purchases of lodging. The tourism promotion area charge is not subject to the sales tax rate limitations of RCW 82.14.410. To determine whether your lodging business must collect and remit the charge, refer to the special notices for tourism promotion areas at http://dor.wa.gov/content/GetAFormOrPublication/PublicationBySubject/tax_sn_main.aspx or the lodging industry guide at <http://dor.wa.gov/content/doingbusiness/BusinessTypes/Industry/lodging/>.

(8) Furnishing emergency lodging to homeless. The charge made for the furnishing of emergency lodging to homeless persons purchased via a shelter voucher program administered by cities, towns, and counties or private organizations that provide emergency food and shelter services is exempt from the retail sales tax, the convention and trade center tax, and the special hotel/motel tax. (~~This exemption became effective July 1, 1988.~~) This form of payment does not influence the required minimum of transient rooms available for use as transient lodging under the "convention and trade center tax" or under the "special hotel/motel tax."