



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)
Do NOT use for expedited rule making

Agency: Department of Revenue

- Preproposal Statement of Inquiry was filed as WSR 13-15-146; or
- Expedited Rule Making--Proposed notice was filed as WSR; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information: WAC 458-20-241 (Radio and television broadcasting)

Hearing location(s):

Capitol Plaza Building
4th Floor – Large Exec Conference Room
1025 Union Avenue SE
Olympia, Washington

Copies of draft rules are available for viewing and printing on our website at [Rules Agenda](#)

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

Date: October 23, 2014 Time: 10:30 A.M.

Date of intended adoption: **October 30, 2014**
(Note: This is NOT the effective date)

Submit written comments to:

Name: Richard Cason
Address: Department of Revenue
Post Office Box 47453
Olympia, Washington 98504-7453

E-mail: RichardC@dor.wa.gov

By: **October 23, 2014**

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 hearing date. For Hearing Impaired please contact us via the Washington Relay Operator at (800) 833-6384.

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

WAC 458-20-241 (Rule 241) explains the B&O, retail sales, and use tax reporting responsibilities of radio and television broadcasters. This includes a B&O tax deduction provided for certain radio and television broadcasting advertising revenues provided in RCW 82.04.280. The statute authorizes a deduction based on either: 1) a standard deduction based on information reported by the Federal Communications Commission (FCC); or 2) itemization by the individual broadcasting station. Rule 241 currently recognizes that the FCC no longer publishes the information, and explains that the Department will authorize a standard deduction if the broadcasting industry provides such information to the Department for verification. The Joint Legislative Audit and Review Committee, (JLARC) reviewed this deduction and recommended that the rule comply with the statute as written.

Reasons supporting proposal: To conform the rule to be consistent with the statute and the JLARC recommendation.

Statutory authority for adoption: RCW 82.32.300

Statute being implemented: RCW 82.04.280

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

DATE **September 16, 2014**

NAME Dylan Waits

SIGNATURE

TITLE Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: **September 16, 2014**

TIME: **10:17 AM**

WSR 14-19-092

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent:

Department of Revenue

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Richard Cason	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360) 534-1577
Implementation.... Dylan Waits	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360) 534-1583
Enforcement..... Alan Lynn	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360) 534-1599

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No. Explain why no statement was prepared.

The rule does not impose any new performance requirements or administrative burden on any small business not required by statute.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No: Please explain:

The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

AMENDATORY SECTION (Amending WSR 83-08-026, filed 3/30/83)

WAC 458-20-241 Radio and television broadcasting. (1) Introduction.

(a) This section provides tax reporting instructions for persons in the radio and television broadcasting industry. It explains the application of business and occupation (B&O) tax, retail sales tax, and use tax to the industry and provides an explanation of the various deductions available.

(b) For a discussion of the tax liabilities of subscriber television services, see WAC 458-20-227.

(c) For a discussion of the taxability of digital products, see WAC 458-20-15503.

(2) Definitions. For the purpose of this rule:

(a) "Broadcast" or "broadcasting" includes both radio and television commercial broadcasting stations unless it clearly appears from the context to refer only to radio or television.

(b) "Local advertising" means all broadcast advertising other than national, network, or regional advertising as herein defined.

(c) "National advertising" means broadcast advertising paid for by sponsors which supply goods or services on a national or international basis.

(d) "Network advertising" means broadcast advertising originated by national or regional broadcast networks from outside the state of Washington, the broadcast advertising being supplied by national or regional network broadcasting companies.

(e) "Regional advertising" means broadcast advertising paid for by sponsors which supply goods or services on a regional basis over two or more states.

(3) Business and occupation tax.

(a) Radio and television broadcasting. Taxable on gross income from the sale of radio or television advertising (~~(, and any other gross income from broadcasting, excluding sales to other broadcasters of the right to broadcast material on processed film, sound recorded magnetic tape, and other transcriptions (see service and other activities))~~).

(b) Service and other activities. Taxable on gross income from personal or professional services, including gross income from producing and making custom commercials or special programs, fees for providing writers, directors, artists, and technicians, and granting a license to use facilities (as distinct from the leasing or renting of tangible personal property, see WAC 458-20-211).

(c) Royalties. Taxable on charges to other broadcasters for granting the right to use intangible property (e.g., the right to use broadcast material).

(d) Retailing or wholesaling. Taxable on gross proceeds of sales of tangible personal property, including gross proceeds from sales of films and tape produced for general distribution and from sales of copies of commercials, programs, films, etc., even though the original was not subject to retail sales tax. The sale of custom-made programs, commercials, films, etc., is not taxable under this classification. (See subheading **Service and other activities** in (b) of this subsection.)

(e) Manufacturing. Taxable on the cost to produce special programs, such as public affairs, religious, travelogues, and other general programming, which are distributed via tangible media to other

broadcasters under a lease or contract granting a mere license to use. (For a discussion of the taxability of digital products transferred electronically, see WAC 458-20-15503.) This tax does not apply to a recording made for the broadcaster's own use, including news, delayed programs, commercials and promotions, special and syndicated programming, and "entire day" programming.

(4) Deductions from gross income from advertising~~((:-(1)))~~.

(a) Agency fees. It is a general trade practice in the broadcasting industry to make allowances to advertising agencies in the form of the deduction or exclusion of a certain percentage of the gross charge made for advertising ordered by the agency for the advertiser. This allowance ~~((will be))~~ is deductible as a discount in the computation of the broadcaster's tax liability in the event that the allowance is shown as a discount or price reduction in the billing or that the billing is on a net basis, i.e., less the discount.

~~((2))~~ (b) Gross receipts from national, network, and regional advertising. The taxpayer may deduct ~~((either))~~ actual gross receipts from national, network, and regional advertising ~~((as herein defined))~~, as included in the gross amount reported under radio and television broadcasting ~~((, or may take a))~~.

The "standard deduction" for gross receipts from national, network, and regional advertising as provided by RCW 82.04.280, ~~((as amended by chapter 149, Laws of 1967 ex. sess., which will be a percentage arrived at annually for all broadcast stations in the state of Washington which use the standard deduction method. This percentage will be determined by dividing the total broadcast advertising receipts in the nation from network, national, and regional advertising by the total broadcast advertising receipts in the nation.~~

This standard deduction will be based on the most current figures published at the beginning of the calendar year and shall be used throughout that calendar year notwithstanding the publishing of the following year's figures within that calendar year. Previously the Federal Communications Commission published the figures used to compute the standard deduction. The Federal Communications Commission no longer publishes these figures and henceforth it will be the responsibility of the industry to annually provide these figures to the department of revenue. The figures used will be subject to verification by the department.

Example of computation:

~~The standard deduction for persons engaged in radio and television broadcasting was 64% for the calendar year 1970. The deduction was computed as follows:~~

1. Total radio advertising receipts 1968	\$1,076,300,000
2. Total television advertising receipts 1968	2,087,600,000
3. Total broadcast advertising receipts	3,163,900,000
4. Total national, network, regional advertising receipts, radio, 1968	379,200,000
5. Total national, network, regional advertising receipts, television, 1968	1,635,100,000

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|--|---------------|
| 6. Total broadcast advertising receipts from national, network, and regional advertising | 2,014,300,000 |
| 7. Standard deduction for 1970 will be the quotient of line 6 divided by line 3 or | 64% |

~~(3) Interstate business, allocation.~~ It is recognized that radio and television broadcasting is an interstate business and that under the Constitution of the United States a tax is prohibited upon so much of the revenue of a radio or television broadcasting station as is derived from the service of broadcasting to persons in other states or foreign countries. Accordingly,) represents a percentage based on the national average thereof as annually reported by the Federal Communications Commission. The Federal Communications Commission no longer publishes these figures and henceforth the "standard deduction" is not available. Broadcasters may only deduct gross receipts from national, network, and regional advertising on an actual basis.

(c) Allocation of local advertising revenues. Revenues from local advertising (~~shall~~) may be allocated to remove from the tax base the gross income from advertising which is intended to reach potential customers of the advertiser who are located outside the state of Washington.

It will be presumed that the entire gross income of radio and television stations located within the state of Washington from local advertising (~~as herein defined~~) is subject to tax unless and until the taxpayer submits proof to the department of revenue that some portion of such income is exempt according to the principles set forth herein and until a specific allocation formula has been approved by the department.

(d) Method of allocation. When the total daytime listening area of a radio or television station extends beyond the boundaries of the state of Washington, the allowable deduction is that portion of revenue represented by the out-of-state audience computed as a ratio to the station's total audience as measured by the 100 microvolt signal strength and delivery by wire, if any. The out-of-state audience may therefore be determined by delivery "over the air" and by community antenna television systems. However, community antenna television audiences may not be claimed by a station in the same area in which it claims an audience served over the air, thus eliminating a claim for double exemption.

The most current United States and Canadian census figures (~~will~~) must be used to determine the in-state and out-of-state audience.

An engineer holding at least a first class operator's license from the Federal Communications Commission must compute the 100 microvolt contour for the station claiming the exemption. The 100 microvolt contour will be applicable to all broadcasting stations, whether standard (AM), frequency modulation (FM), or television (TV), and the applicable contour will be the daytime ground-wave contour. The computation must be submitted to the department of revenue in map form, showing the scale used in miles, with the contour drawn on the map and the counties or cities within the contour indicated. The map must be certified as being correct by the personal signature of the engineer making the computation. The type of license held by the engineer should be indicated. The map must have attached to it the population

covered both within and without the state according to the applicable United States and Canadian census.

In the event that ((eable)) community antenna television subscribers are claimed as part of the out-of-state audience, the name of the systems, the location, and the number of subscribers must also be attached to the map. The number of subscribers will be multiplied by a factor of 3, representing the average size household family.

The foregoing exhibits must be ((forwarded to the Department of Revenue, Olympia, Washington 98504, and must be)) approved by the department before any deduction is allowable.

~~((Service and other activities. Taxable on gross income from personal or professional services, including gross income from producing and making custom commercials or special programs, fees for providing writers, directors, artists and technicians, charges for the granting of a license to use facilities (as distinct from the leasing or renting of tangible personal property, see WAC 458-20-211), and charges to other broadcasters for the mere right to broadcast material on processed film, sound recorded magnetic tape, and other transcriptions when the material is returned to the original broadcaster.~~

~~**Retailing or wholesaling.** Taxable on gross proceeds of sales of tangible personal property, including gross proceeds from sales of films and tape produced for general distribution and from sales of copies of commercials, programs, films, etc., even though the original was not subjected to sales tax. The sale of custom made programs, commercials, films, etc., is not taxable under this classification. (See subheading **Service and other activities** above.)~~

~~**Manufacturing.** Taxable on the cost to produce special programs, such as public affairs, religious, travelogues, and other general programming, which are vended to other broadcasters under a lease or contract granting a mere license to use. This tax does not apply to a recording made for the broadcaster's own use, including news, delayed programs, commercials and promotions, special and syndicated programming, and "entire day" programming.)~~

(5) Retail sales tax. Sales to broadcasters of equipment, supplies and materials for the broadcaster's own use and not for resale are subject to the retail sales tax. This includes sales of raw or unprocessed film ((or)), magnetic tape, DVDs, and other transcription material ((as well as processed film, recorded magnetic tape or other transcriptions unless vended under a lease or contract granting a mere license to use)).

If the tapes, films, etc., upon which the sales tax has been paid are later sold by the broadcaster in the regular course of business, the provisions of WAC 458-20-102 concerning purchases for dual purposes will apply.

~~((Sales to broadcasters of the right to broadcast the material on processed film, sound recorded magnetic tape, and other transcriptions under a right or license granted by lease or contract are not retail sales and the retail sales tax is not applicable.))~~

The broadcaster must collect retail sales tax on sales to consumers of packaged films, programs, etc., produced for general distribution, including training and industrial films, and also on sales of copies of films, commercials, programs, etc., even though the original was not subjected to retail sales tax.

(6) Use tax. Acquisition or exercise of the right to broadcast ((processed film, recorded magnetic tape or other transcriptions)) material under a right or license granted by lease or contract is not

the use of tangible (~~personable~~) personal property by the broadcaster and the use tax is not applicable.

Broadcasters of radio and television programs are subject to use tax on the value of articles manufactured or produced by them for their own use (excluding custom produced commercials or special programs which includes, but is not necessarily limited to, recordings of news, delayed programs, commercials and promotions, special and syndicated programming, and "entire day" programming) and on the use of tangible personal property purchased or acquired under conditions whereby the retail sales tax has not been paid. The broadcaster is liable for use tax on the value (cost of production) of (~~processed film, sound recorded magnetic tape, and other transcriptions~~) programming when the broadcaster (~~vends~~) sells merely the right to broadcast such material under a right or license granted by lease or contract.

(~~Effective September 1, 1982.~~)

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