



# 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 15-04-066; 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 458-20-258 *Travel agents and tour operators* (Rule 258) describes the business and occupation (B&O), retail sales, and use tax responsibilities of persons providing travel agent and/or tour operator services. A travel business may include both travel agent and tour operator activities.

**Hearing location(s):**

Capitol Plaza Building  
Fourth Floor Executive 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:** August 26, 2015 **Time:** 10:00 AM

**Date of intended adoption:** September 2, 2015.  
(Note: This is NOT the effective date)

**Submit written comments to:**

Name: Mark Bohe  
Address: Department of Revenue  
Interpretations & Technical Advice Division  
Post Office Box 47453  
Olympia, Washington 98504-7453

E-mail: [markbohe@dor.wa.gov](mailto:markbohe@dor.wa.gov)

By: August 26, 2015, at noon.

**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:** Rule 258 is being amended to:

- Update the rule to reflect the identical tax rates for B&O tax applied to Travel Agents and Tour Operators;
- Add clarifying examples for the taxation of income and sale or use of tangible personal property;
- Add clarifying examples for determining appropriate B&O tax classifications;
- Add definition regarding day trips for sight-seeing purposes; and
- Add clarifying language throughout the rule.

**Reasons supporting proposal:** Amendments add updates and clarifying examples to existing rule.

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

**Statute being implemented:** RCW 82.04.260, 82.08.020, and 82.12.020.

**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:

**DATE** July 22, 2015

**NAME** Dylan Waits

**SIGNATURE**

**TITLE**  
Rules Coordinator

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE:** July 22, 2015

**TIME:** 10:24 AM

**WSR 15-15-173**

**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..... Mark Bohe	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360) 534-1574
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(s) do 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 rules are not significant legislative rules as defined by RCW 34.05.328.

AMENDATORY SECTION (Amending WSR 90-17-003, filed 8/2/90, effective 9/2/90)

**WAC 458-20-258 Travel agents and tour operators. (1) Introduction.** This ((section describes the business and occupation (B&O) taxation of travel agents and tour operators. Travel agents are taxed at the special travel agent rate under RCW 82.04.260(10). Tour operators are generally taxed under the service or other business classification under RCW 82.04.290. However, the business activities of tour operators may sometimes include activities like those of a travel agent. This section recognizes the overlap of activities and taxes them consistently.

**(2) Definitions:**

(a) "Commission" means the fee or percentage of the charge or their equivalent, received in the ordinary course of business as compensation for arranging the service. The customer or receiver of the service, not the person receiving the commission, is always responsible for payment of the charge.

(b) "Pass through expense" means a charge to a tour operator business where the tour operator is acting as an agent of the customer and the customer, not the tour operator, is liable for the charge. The tour operator cannot be primarily or secondarily liable for the charge other than as agent for the customer. See: WAC 458 20 111 Advances and reimbursements.

(c) "Tour operator business" means a business activity of providing directly or through third party providers, transportation, lodging, meals, and other associated services where the tour operator purchases or itself provides any or all of the services offered, and is itself liable for the services purchased.

(d) "Travel agent business" means the business activity of arranging transportation, lodging, meals, or other similar services which are purchased by the customer and where the travel agent or agency merely receives a commission for arranging the service.

**(3) Travel agents.**

(a) The gross income of a travel agent or a travel agent business is the gross commissions received without any deduction for the cost of materials used, labor costs, interest, discount, delivery cost, taxes, losses, or any other expense. It is taxed at the special travel agent rate.

(b) Gross receipts, other than commissions, from other business activities of a travel agent, including activities as a tour operator, are taxed in the appropriate B&O classification, service, retailing, etc., as the case may be.

**(4) Tour operators.**

(a) The gross income of a tour operator or a tour operator business is the gross commissions received when the activity is that of a travel agent business.

(i) When a tour operator receives commissions from a third party service provider for all or a part of the tour or tour package, the gross income of the business for that travel agent activity is the commissions received.

(b) However, if the activity is that of a tour operator business, receipts are B&O taxable in the service classification without any deduction for the cost of materials used, labor costs, interest, discount, delivery cost, taxes, losses, or any other expense; **except, re-**

ceipts attributable to pass through expenses are not included as part of the gross income of the business.

(5) ~~Examples:~~

(a) ~~A travel agent issues an airplane ticket to a customer. The cost of the ticket is \$250 which is paid by the customer. The travel agent receives \$25 from the airline for providing the service.~~

~~(i) The gross income of the business for the travel agent is the \$25 commission received.~~

~~(ii) The gross income of the business is taxed at the special travel agent rate.~~

(b) ~~A tour operator offers a tour costing \$1,500 per person. The tour cost consists of \$800 airfare, \$500 lodging and meals, and \$200 bus transportation. The tour operator has an arrangement with each of the service providers to receive a 10% commission for each service of the tour, which in this case is \$150 (\$80 + \$50 + \$20). The tour operator issues tickets, etc, only when paid by the customer and is not liable for any services reserved but not provided.~~

~~(i) The tour operator is engaged in a travel agent activity and the gross income of the business is commissions received, \$150.~~

~~(ii) The gross income of the business, \$150, is taxed at the special travel agent rate.~~

(c) ~~The same facts as in example (b) except that the tour operator has a policy of requiring 10% or \$150 as a down payment with the remaining \$1,350 payable 20 days prior to departure with 95% refundable up to 10 days prior to departure and nothing refunded after 10 days prior to departure. The customer cancels 15 days prior to departure and is refunded \$1,425 with the tour operator retaining \$75.~~

~~(i) The gross income of the tour operator business is the \$75 retained. No amount is attributable to pass through expense since the tour operator was not obligated to the service provider in the event of cancellation and the tour operator was not acting as the agent of the customer.~~

~~(ii) The gross income of the business, \$75, is taxed in the service B&O tax classification.~~

(d) ~~A tour operator offers a package tour for the Superbowl costing \$800 per person. The tour operator purchases noncancellable rooms in a hotel for \$300 per room for 2 nights, and game tickets which cost \$100 each. The package includes airfare which costs \$200 per person for which the tour operator receives the normal commission of \$20. As an extra feature, the tour operator offers to provide, for an extra cost, special event tickets, if available, at his cost of \$50 each. The tour operator is B&O taxable as follows:~~

~~(i) The gross income of the tour operator business is \$600 (\$800 less \$200 airfare). Because the tour operator purchased the rooms and the game tickets in its own name and is liable for the rooms or tickets if not resold, the tour operator is not operating as a travel agent business and is B&O taxable in the service classification. If the tour operator receives a commission on the rooms sold to itself, the activity remains taxable as a tour operator business under the service classification and the commission received is treated as a cost discount, not included in the gross income of the business.~~

~~(ii) The \$50 received for the special event ticket is attributable to a pass through expense and is not included in the gross income of the tour operator business. The special event ticket receipt is attributable to a pass through expense because the tour operator is acting as an agent for the customer.~~

(iii) The \$20 received as commission from the sale of the airfare is a travel agent business activity and is included as gross income of a travel agent and taxed at the special travel agent rate) rule describes the business and occupation (B&O), and retail sales and use tax reporting responsibilities of persons providing travel agent and/or tour operator services. A travel business may include both travel agent and tour operator activities.

(a) **References to related rules.** The department of revenue (department) has adopted other rules that readers may want to refer to:

(i) WAC 458-20-111 (Advances and reimbursements);

(ii) WAC 458-20-183 (Amusement, recreation, and physical fitness services);

(iii) WAC 458-20-19401 (Minimum nexus thresholds for apportionable activities); and

(iv) WAC 458-20-19402 (Single factor receipts apportionment—Generally).

(b) **Rule examples.** This rule includes a number of examples that identify a set of facts and then state a conclusion. These examples are only a general guide. The department will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority.

(2) **Travel agents.**

(a) **Definitions. For purposes of this rule:**

(i) A "travel agent" is a person engaging in the business activity of arranging travel including, but not limited to, transportation, lodging, meals, or other similar service that is purchased by the customer from the service provider and where the travel agent merely receives a commission for arranging the customer's service.

(ii) A "commission" is the fee or percentage of the price charged by a service provider to a customer that the travel agent receives from the service provider as compensation for arranging the purchase of the service by the customer. Commission also includes any additional fee charged by the travel agent to the customer that the travel agent receives as compensation for arranging the purchase of the service by the customer.

(b) **Taxability of income.**

**Travel agent services.** The gross income for engaging in business as a travel agent is the commissions received, which is subject to the travel agent/tour operator B&O tax classification. The gross amount of the commissions is taxable, without any deduction for the cost of materials used, labor costs, interest, discount, delivery cost, taxes, losses, or any other expense.

**Example 1:** Travel Agent books an airplane ticket for Jane in Jane's name. The cost of the ticket is \$250, which is paid by Jane. Travel Agent receives \$25 from the airline for providing the service. Travel Agent is at no time personally liable for the ticket price. The \$25 commission received by Travel Agent is subject to the travel agent/tour operator B&O tax classification.

(c) **Other income.** Income from other business activities is subject to tax under the appropriate B&O tax classification, such as service and other business activities B&O tax classification or retailing B&O tax classification, as the case may be. If the sale is a retail sale, retail sales tax must be collected unless the sale is specifically exempt by law. See subsection (3) of this rule for an explanation of the taxability of tour operator activities and subsection

(4) of this rule for an explanation of the taxability of other potential income generating activities.

(d) **Taxability of purchases.** A travel agent is the consumer of tangible personal property or retail services the travel agent purchases and/or uses in providing travel agent services. If the travel agent does not pay retail sales tax to the seller of the property or services, the travel agent must remit retail sales (commonly referred to as "deferred sales tax") or use tax directly to the department.

**Example 2:** TTT Travel Services has a booking arrangement with its charter air and bus transportation service providers, under which TTT receives from the providers 10% of the selling price of each ticket sold. TTT charges its customers the face value of each ticket sold. Thus, if TTT:

(i) In its capacity as agent for Susan Smith, arranges the purchase of Susan's air transportation from XY Airlines for \$500, the \$50 TTT receives from XY Airlines is considered commission income subject to the travel agent/tour operator B&O tax classification.

(ii) Has a policy requiring customers to pay a 10% nonrefundable down payment for a tour, with the remaining balance due 15 days before departure. If a customer fails to pay the remaining balance or cancels the tour, TTT retains the 10% down payment. Any down payment retained by TTT is included in the gross income of the business and subject to the travel agent/tour operator B&O tax classification.

**Example 3:** SSS Travel Services offers a Washington state tour. The tour package consists of lodging and bus transportation services, which are reserved by SSS but SSS has no liability for any lodging or bus tickets not sold by SSS to customers.

SSS sells a tour package to Jane, and also arranges air transportation to the site where the tour begins. Jane pays \$300 for the airline ticket and SSS receives a \$30 fee (10% of the airfare) from the airline for booking the flight. Further, SSS collects \$600 from Jane for the lodging, only paying \$500 over to the lodging providers and collects \$400 for the bus transportation but only pays over to the transportation providers \$360.

SSS's gross income from travel agent/tour operator activities is \$170, which is subject to the travel agent/tour operator B&O tax classification. This total of \$170 income consists of the \$30 commission from the airline, \$100 retained from the sale of the lodging, \$40 retained from the sale of the bus transportation.

(3) **Tour operators.**

(a) **Definitions.**

(i) A "tour operator" is a person engaging in the business activity of providing tours directly or through third-party providers including, but not limited to, transportation, lodging, meals and other associated services that are purchased by the customer. The tour operator generally either purchases or provides some or all of the services offered, and is itself liable for the payment of the services purchased.

(ii) "Day trips for sightseeing purposes" is a business activity of providing directly or through third-party providers, sight-seeing tours lasting less than twenty-four hours to consumers. Day trips for sightseeing purposes are taxable as "amusement and recreation services" subject to the retailing B&O tax classification and retail sales tax as provided in RCW 82.04.050 (15)(a) and 82.08.020, respectively. Information regarding amusement and recreation services is provided in WAC 458-20-183.

(iii) A "pass-through expense" is an amount received by a tour operator from a customer where the tour operator is acting as agent of the customer in purchasing services from a service provider. The customer, not the tour operator is liable for payment of the service provider's charge. The tour operator cannot be primarily or secondarily liable for the charge, other than as agent for the customer. Information regarding advances and reimbursements is provided in WAC 458-20-111.

(b) **Taxability of income.**

**Tour operator services.** The gross income received for engaging in business as a tour operator is subject to the travel agent/tour operator B&O tax classification. There is no deduction allowed for the cost of materials used, labor costs, discounts, taxes, losses, or any other expense to the tour operator. Amounts received from the customer for pass-through expenses are not included as a part of gross income.

**Example 4:** TTT Travel Services offers a Washington state tour priced at \$1,500. The tour package consists of air transportation, lodging, and bus transportation. TTT is liable for paying the service providers, even if a customer fails to pay TTT for a reserved tour. The gross income of the business is the total tour sales price received, \$1,500, subject to the travel agent/tour operator B&O tax classification.

(c) **Other income.** Income from other business activities is subject to tax under the appropriate B&O classification, such as service and other business activities classification or retailing classification, as the case may be. If the sale is a retail sale, retail sales tax must be collected unless specifically exempt by law. See subsection (2) of this rule for an explanation of the taxability of travel agent activities and subsection (4) of this rule for an explanation of the taxability of other potential income-generating activities.

(d) **Taxability of purchases.** A tour operator is the consumer of tangible personal property or retail services the tour operator purchases and/or uses in a tour operator's business. If the tour operator does not pay retail sales tax to the seller of the property or services, the tour operator must remit retail sales (commonly referred to as "deferred sales tax") or use tax directly to the department.

(4) **Taxability of other income.** A travel agent or tour operator may derive income from business activities other than as a travel agent or tour operator. The gross income from these other business activities is subject to other B&O tax classifications and retail sales tax, as provided by law.

Examples of other income that a travel agent or tour operator may receive include:

(a) **Sales of tangible personal property, such as a gift or merchandise to customers.** Gross proceeds from these sales are subject to retailing B&O tax classification and the travel agent/tour operator must collect and remit retail sales tax, unless specifically exempt by law.

(b) **Management, financial, and administrative services provided to an affiliated company.** Gross income from these activities is subject to the service and other business activities B&O tax classification, even if the affiliated company is engaged in business as a travel agent or tour operator.

(c) **Incentive payments or other referral fees.** Gross income from the activities of making referrals for other providers or of using products or services of other providers is subject to the service and other business activities B&O tax classification. This includes pay-

ments to travel agents from businesses providing centralized computer distribution system services used to store and retrieve information and conduct transactions related to travel services provided by hotels, airlines, rental car companies, and other travel-service providers.

**Example 5:** TTT Travel Services (TTT) is hired to purchase an airline ticket for a customer. TTT uses Centralized Computer Distribution Services (CCDS) to purchase the airline ticket from Airways Company. Airways Company pays CCDS a commission for booking the airline ticket. CCDS then pays TTT a fee for TTT using its computerized booking services. The fee to TTT is based on a percentage of the commission CCDS received from Airways Company. The fee received by TTT from CCDS is subject to the service and other business activities B&O tax classification.

**Example 6:** TTT Travel Services (TTT) is hired to book an airline ticket for a customer. After locating an XY Airlines flight the customer wants, TTT purchases the ticket in the name of the customer. XY Airlines agrees that TTT has no liability to pay for the flight and that the customer alone is liable to pay for the flight. The customer agrees that TTT has no liability for providing the purchased service and the customer will not be entitled to a refund from TTT if the flight is canceled. In these circumstances, TTT may exclude the amount for its customer. However, if TTT Travel provided XY Airlines with a guarantee of payment, then TTT would have a secondary liability to pay for the ticket and would not be entitled to exclude the amount from gross income.

TTT must include as gross income all commission income received from XY Airlines, the service provider, for booking the air transportation, whether paid by the customer or the service provider. Any additional fees for other activities are subject to the service and other business activities B&O tax classification.

**Example 7:** TTT Travel Services (TTT) offers a Washington state tour priced at \$1,500. The tour package consists of air transportation, lodging, and bus transportation. TTT is liable for paying the service providers, even if a customer fails to pay TTT for a reserved tour. The gross income of the business is the total tour sales price received, \$1,500, subject to the travel agent/tour operator B&O tax classification.

**Example 8:** TTT has a policy requiring customers to pay a 10% non-refundable down payment for a tour, with the remaining balance due 15 days before the departure. If a customer fails to pay the remaining balance or cancels the tour, TTT retains the 10% down payment. Any down payment retained by TTT is included in the gross income of the business and subject to the travel agent/tour operator B&O tax classification.

**Example 9:** SSS Travel Services (SSS) offers a tour package and also arranges transportation to the site where the tour begins. The tour package includes \$300 airline ticket, \$600 lodging and \$400 bus transportation. SSS secondarily guarantees only the airline payment. SSS's gross income from the air fare is \$300. If SSS purchases the lodging from Great Hotels to sell in its tour packages, it will include in gross income the price of the lodging purchased from Great Hotels that it resells to its tour package customers.

(5) **Apportionment.** Persons engaged in business as a travel agent or tour operator both inside and outside the state may be eligible to apportion gross income reportable under the "travel agent/tour operator" B&O tax classification. WAC 458-20-19401 and 458-20-19402 provide

THIS PROPOSED RULE IS SUBMITTED FOR PUBLIC COMMENTS AFTER INPUT FROM INTERESTED PARTIES AND IS TO BE USED SOLELY FOR DISCUSSION PURPOSES AT THE PUBLIC HEARING ON THE PROPOSED RULE. UNDER NO CIRCUMSTANCES IS THIS PROPOSED RULE TO BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS.

guidance on apportionment methods that may be appropriate for a travel agent or tour operator that has substantial nexus with other states.

DRAFT