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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**, receipts 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)) provides information on the tax obligations of persons engaging in business as a travel agent or tour operator. Engaging in business as a travel agent means arranging transportation, lodging, meals, or other similar services which are purchased by the customer and for which the travel agent or agency merely receives compensation, such as a commission, for arranging the service. Engaging in business as a tour operator means providing directly or through third party providers, transportation, lodging, meals, and other associated services where the tour operator purchases for its use or itself provides any or all of the services offered. A travel business may include both travel agent and tour operator activities. This section recognizes the overlap of activities and taxes them consistently.~~

(2) Other sections; examples.

(a) The following sections may contain additional relevant information:

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

WAC 458-20-118 (Sale or rental of real estate, license to use real estate);

WAC 458-20-12401 (Special stadium sales and use tax);

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

WAC 458-20-175 (Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce);

WAC 458-20-180 (Motor transportation, urban transportation);

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

WAC 458-20-194 (Doing business inside and outside the state).

(b) Examples. This section contains a number of examples that identify 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.

(3) Business and occupation tax.

(a) Reporting classification. Gross income from engaging in business as a travel agent or tour operator is reported under the "travel agent/tour operator" B&O classification. Gross income from engaging in other business activities are taxed under the appropriate B&O classification, service, retailing, etc., as the case may be. "Gross income" generally means the value proceeding or accruing by reason of the business engaged in, including gross proceeds of sales, commissions, and compensation for the rendition of services, all without any deductions for costs or losses. See RCW 82.04.080 for the complete definition of "gross income." However, a limited exclusion, explained below, may apply.

(b) Limited exclusion from gross income: Advances and reimbursements. Persons purchasing transportation, lodging, meals, or other similar or associated services solely as an agent may exclude from gross income amounts received from the principal as an advance or reimbursement of charges, but only if all elements of WAC 458-20-111 are met, including:

(i) The advance or reimbursement is received for the purchase of services in accordance with the regular and usual custom of the agent's profession;

(ii) The principal alone is liable to pay for the travel services. The agent may not have any primary or secondary liability to pay for the services other than as agent for the customer or client; and

(iii) The agent does not or cannot render the services and

no liability attaches to the agent for such services.

(c) Examples:

(i) TTT Travel Services is hired to book airline tickets for a customer. After locating a flight the customer wants, TTT purchases the ticket in the name of the customer. The airline 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 an advance or reimbursement received from its customer as repayment for the purchase of airline tickets from its gross income. However, if ABC Travel provided the airline with a guarantee of payment, then TTT would have a secondary liability to pay for the tickets, and would not be entitled to exclude the advance or reimbursement from gross income.

In either case, TTT must include all commission income received from the airline and all service or other fees it collects from the customer for travel agency services.

(ii) TTT Travel Services offers a Washington state tour priced at \$1,500 per person. The tour price consists of \$800 airfare, \$500 lodging, and \$200 bus transportation. TTT has an arrangement with each of the service providers to receive a 10% commission for each service included in the tour, which in this case is \$150 (\$80 + \$50 + \$20). TTT issues tickets, etc., only when paid by the customer and is not liable to pay for any of the travel services reserved but not provided. The gross income of the business is commissions received, \$150, taxed at the travel agent/tour operator rate.

(iii) Assume the same facts as in example (ii), except that TTT is liable to pay the bus company for the bus transportation. The gross income of TTT is the commissions received for the airfare and lodging, plus the full amount received for the bus transportation, a total of \$330 (\$80 + \$50 + \$200), taxed at the travel agent/tour operator rate.

(iv) Assume the same facts as in example (ii), except that TTT is liable to pay the hotel for the hotel rooms. The gross income of TTT is the commissions received for the airfare and bus transportation, plus the full amount received for the hotel rooms, a total of \$600 (\$80 + \$20 + \$500), taxed at the travel agent/tour operator rate. TTT must pay retail sales tax on its purchase of the hotel rooms, because the hotel rooms are purchased by TTT as a consumer for its own use in providing tours and not merely for resale.

(v) TTT has a policy requiring customers to pay a 10% nonrefundable down payment for the tour, with the remaining balance due at departure. If a customer cancels the tour, TTT retains the 10% deposit. TTT must include the entire deposit

retained in its gross income. This is true even if TTT pays all or part of the deposit retained to a hotel, airline, or other service provider as a cancellation or similar fee. TTT may only exclude funds paid to a service provider as a cancellation or similar fee if TTT pays the fee solely as the agent of the customer; the fee obligation is that of the customer alone; and TTT has no liability for the fee. See WAC 458-20-111.

(vi) TTT offers a package tour for the Superbowl priced at \$800 per person. TTT 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 customer, rather than TTT, is liable. However, TTT receives the normal commission of \$20 from the airline. As an extra feature, TTT offers to provide special event tickets, if available, at its cost of \$50 each. TTT is taxable as follows:

TTT's gross income is \$620 (\$800 less \$200 airfare, plus \$20 commission). Because TTT purchased the rooms and the game tickets as a consumer and is liable for the rooms or tickets if not resold, B&O tax applies to the gross receipts for those travel services. If TTT also receives a commission on the rooms from the hotel, the commission is treated as a cost discount and not included in the gross income of the business.

The \$50 received for the special event ticket is not included in gross income because TTT is acting as an agent for the customer in purchasing the tickets, pursuant to WAC 458-20-111.

(d) Apportionment. Persons engaging in business as a travel agent or tour operator may be eligible to apportion gross income reportable under the "travel agent/tour operator" classification in the same manner as under WAC 458-20-194. Travel agents and tour operators must meet the nexus requirements and may use any of the apportionment methods approved under WAC 458-20-194.

(i) Example. ABC Travel has offices in Washington, Oregon, and California. ABC Travel has a toll-free number for use by customers served by all offices, but all calls to that number are received by employees in the California office. ABC Travel may apportion its gross income in the same manner as under WAC 458-20-194.

(ii) Example. Amuseum Tours Inc., a Washington company, offers week long tour packages. Each tour includes lodging and sightseeing activities in Washington, Idaho, and Montana. Amuseum Tours, Inc. may apportion its gross income in the same manner as under WAC 458-20-194.

(4) **Lodging tax.** Persons furnishing lodging are required to collect and remit any lodging tax levied by a county or city on the sale of or charge made for the furnishing of lodging. See, e.g., RCW 35.101.050, 36.100.040, 67.28.180, and 67.40.090.

Lodging taxes do not apply to commissions or fees received directly from a customer for the provision of lodging-related travel services such as offering information about the availability of lodging to a customer and/or facilitating the reservation of lodging for that customer, where the travel agent or tour operator does not itself furnish the lodging. A travel agent or tour operator is not furnishing lodging if it has no right to use, possess, sublease, or sublicense the rooms.

For example, a hotel (located in a jurisdiction with a lodging tax) agrees to provide hotel rooms to customers of ABC Travel. The hotel agrees to charge a rate of \$100 per night per room, with the understanding that ABC Travel will charge its customers a higher amount for the rooms, including charges for ABC's services in facilitating the lodging. Customers of ABC Travel obtain the right to possession and use of the room and other facilities directly from the hotel and recognize they will pay a commission or fee to ABC Travel for its services. ABC Travel does not obtain a lease of or license for the rooms, or any other right of possession or use. No liability for the rooms, other than as agent for the customer or client, attaches to ABC Travel. ABC Travel charges its customers \$125 per night for the rooms, retaining \$25 and remitting \$100 to the hotel.

In these circumstances, ABC Travel is not furnishing lodging to its customers. The hotel is furnishing lodging and must collect and remit any applicable lodging tax on the charge made for that service: \$100. The additional \$25 paid by the customer is a fee or commission paid to ABC Travel for its travel services, not part of the sale of or charge made for the furnishing of lodging. ABC Travel must pay B&O tax on the \$25 at the travel agent/tour operator rate.