

This rule was adopted on February 25, 2010 and becomes effective March 28, 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 07-17-109, filed 8/17/07, effective 9/17/07)

WAC 458-20-163 Insurance companies, including surety companies, fraternal benefit societies, fraternal fire insurance associations, beneficiary corporations or societies and Washington state health insurance pool. (1) Introduction. Income earned by insurance companies, including surety companies, fraternal benefit societies, fraternal fire insurance associations, beneficiary corporations or societies, and the Washington state health insurance pool is generally subject to the service and other activities business and occupation (B&O) tax, unless the law provides an exemption or deduction. This section identifies exemptions and deductions available to these businesses. It also explains the reporting responsibilities for retail sales and use taxes for retail purchases and retail services.

(2) **Exemptions.** The law provides the following B&O tax exemptions. These amounts do not need to be reported on the excise tax returns filed with the department of revenue.

(a) RCW 82.04.320 provides an exemption to any person with respect to insurance business upon which a tax based on gross premiums is paid to the state of Washington. It should be noted, however, that the law provides expressly that this exemption does not extend to "any person engaging in the business of representing any insurance company, whether as general or local agent, or acting as broker for such companies" or to "any bonding company...with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor." The exemption also does not apply to any business engaged in by an insurance company other than its insurance business. Thus an insurance company is subject to the retailing or wholesaling B&O tax on sales of salvaged property unless the sales are casual or isolated sales as described in WAC 458-20-106 (Casual or isolated sales--Business reorganizations). Also see WAC ((458-20-102)) 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits) for ((resale certificate)) documentation requirements for wholesale sales.

(b) RCW 82.04.322 provides an exemption to any health maintenance organization, health care service contractor, or

certified health plan in respect to premiums or prepayments that are taxable under RCW 48.14.0201.

(c) RCW 82.04.370 provides an exemption to fraternal benefit societies or fraternal fire insurance associations organized or licensed pursuant to Title 48 RCW and as defined in RCW 48.36A.010.

The statute also exempts beneficiary corporations or societies organized under and existing by virtue of Title 24 RCW, if such beneficiary corporations or societies provide in their bylaws for the payment of death benefits.

The exemption provided by RCW 82.04.370, however, is limited to gross income from premiums, fees, assessments, dues, or other charges directly attributable to the insurance or death benefits provided by such persons. It is not intended that all the varied, regular business activities (e.g., sales of food, liquor, admissions, and amusement devices receipts) of these societies or organizations be exempt from B&O tax. Only that portion of income which can be demonstrated as directly attributable to charges made for insurance or providing death benefits is exempt.

(3) **Deductions.** For periods prior to July 1, 2006, a B&O tax deduction was provided by RCW 82.04.4329 to a member of the Washington state health insurance pool for assessments paid by that member to the pool. This deduction did not apply to a member who had deducted such assessments from the insurance premiums tax, RCW 48.14.020.

(4) **Retail sales and use tax responsibilities.** Insurance companies are subject to the retail sales tax or use tax upon retail purchases, certain retail services, or articles acquired for their own use.

When insurance companies make sales to consumers of salvaged property (e.g., from automobile collisions, fire loss, burglary, or theft recoveries) or any other tangible personal property, they must collect and report retail sales tax on those sales.