

This rule was adopted on August 20, 2007 and becomes effective September 20, 2007. 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.

NEW SECTION

WAC 458-20-274 Staffing services. (1) **Introduction.** This rule explains the application of business and occupation (B&O) tax, public utility tax (PUT); and the retail sales tax collection responsibilities of staffing businesses providing staffing services.

(2) **To whom does this rule apply?** This rule applies to any person engaged in the business activity of providing staffing services. This section does not apply to persons providing professional employer services. Persons providing professional employer services should refer to RCW 82.04.540 for information on their tax-reporting responsibilities.

(3) **What is the definition of a staffing business and staffing services?** A "staffing business" is a person engaged in the business activity of providing staffing services. "Staffing services" means services consisting of a person:

Recruiting and hiring its own employees;

Finding other organizations that need the services of those employees;

Assigning those employees on a temporary basis to perform work at or services for the other organizations to support or supplement the other organizations' work forces, or to provide assistance in special work situations such as, but not limited to, employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects, all under the direction and supervision of the customer; and

Customarily attempting to reassign the employees to other organizations when they finish each assignment.

(4) **Generally, what kinds of business activities are workers assigned by a staffing business?** Business activities may include, but are not limited to, services rendered with respect to:

Construction (both custom and speculative);

Customer software design and implementation;

Manufacturing and light industrial activities;

Professional services including medical and clerical; and

Other skilled and unskilled labor.

(5) **Is the gross income received by a staffing business subject to Washington tax?** Yes, the gross income received by a staffing business is subject to B&O and/or PUT tax.

(6) Is the tax paid by a staffing business or is the tax collected from the client to whom the workers are assigned?

B&O tax and/or PUT are paid by the staffing business.

When the activity of the assigned worker is a retail sale, retail sales tax must be collected from the client unless a specific exemption or exclusion, such as the activity being a sale for resale, applies. The collected tax is paid by the staffing business to the department.

(7) May a staffing business deduct payroll and other business expenses from gross income?

Chapters 82.04 and 82.16 RCW provide limited deductions from the B&O tax and PUT.

The requirements of each specific deduction or exemption must be met to qualify for the deduction or exemption.

Generally, amounts paid to the worker, amounts deducted for payroll taxes, or any other expenses paid or accrued may not be deducted by a staffing business.

But income received for work performed outside the state may be deducted from gross income for B&O tax purposes. Similarly, an interstate haul is deducted from the PUT.

Bad debts on which tax has been paid and which may be written off for federal tax purposes may be deducted from the gross income of both B&O and PUT.

Exemptions, deductions and special tax rates that may apply to the client do not automatically also apply to the staffing business.

Example 1.

- Under the Revenue Act, certain nonprofit hospitals may qualify for a B&O tax deduction for income received through Medicare.

- Also, nonprofit and public hospitals are taxable under a special B&O tax classification.

- However, because the staffing business does not meet the criteria for the B&O tax deduction for income received through Medicare or, for the B&O tax special nonprofit hospital classification, the income received by a staffing business from assigning physicians, nurses, or other health care workers to the hospital is taxable under the service and other activities classification.

Example 2.

- Similarly, the Revenue Act exempts from B&O tax income received by licensed adult family homes.

- However, the gross income received by a staffing business from assigning a health care worker to the adult family home is taxable under the service and other activities B&O tax classification.

(8) What if an activity is not subject to sales tax because it is a sale for resale?

When a service that would otherwise be a retail sale is

performed for a person that resells that service, such as construction work performed for a general contractor, sales tax is not collected when the staffing business receives a completed resale certificate from the client reselling the service.

When a resale certificate is received, the staffing business must report such charges for the worker under the wholesaling B&O tax classification. (See WAC 458-20-102 for more information about resale certificates.)

(9) What is the tax rate?

The B&O tax rate and/or the PUT rate is determined by the classification of the activity engaged in by the assigned worker.

The retail sales tax rate is determined, generally, by the location of where the retail sale is performed. See WAC 458-20-145.

(10) If the B&O tax rate is determined by the B&O tax classification, who determines or identifies the correct classification?

It is the responsibility of the staffing business to determine or identify the applicable B&O tax classification for the activity performed by the assigned worker.

This determination should be made prior to dispatching the worker to the customer.

It is important for the staffing business to know whether retail sales tax should be collected from the customer, or if a resale certificate exemption certificate or other documentation should be received from the customer as evidence of a sales tax exemption.

(11) Is the proper B&O tax classification as reported by the staffing business always the same classification as reported by the client customer to whom the worker is assigned?

Regardless of the nature of the customer's business, the staffing business looks to the activity engaged in by the worker assigned.

The staffing business should not assume that the income it receives through the activities of its workers is taxable under the same classification that the customer reports.

It is the activity of each worker, not the reporting classification of the customer that determines the tax classification.

Example:

- A person operating an insurance agency is taxable under the insurance agents B&O tax classification.

- If the staffing business assigns a receptionist for the insurance agency, the gross income received for the receptionist's services is subject to B&O tax under the service and other activities classification. The service classification applies because the receptionist is not providing services under the authority of an insurance agent's license.

- However, if the staffing business assigns a worker licensed as an insurance agent to an insurance agency, and the licensed insurance agent performs services under the authority of his/her license, the related income is taxable under the insurance agents B&O tax classification.

(12) **What are the major B&O tax classifications?** The major B&O tax classifications include:

- Retailing.
- Wholesaling.
- Manufacturing.
- Processing for hire.
- Service and other activities.
- Stevedoring.
- Travel agent activities.

(13) **Where can I get a description of the activities included in the major B&O tax classification? Where can I get a complete list of the B&O tax classifications and more information?**

The department's *Staffing Industry Guide* provides detailed information on the staffing industry and includes a description of the activities included in the major B&O tax classifications. The *Staffing Industry Guide* is located on the department's web site <http://dor.wa.gov/>

A complete list of the B&O tax classifications and more information about the B&O and PUT can be found on the department's web site <http://dor.wa.gov/>

(14) **What is the public utility tax (PUT)? What are the major classifications of PUT?**

The public utility tax is a tax on gross receipts, similar to the B&O tax.

It applies to most utility services, such as water, power, and gas distribution, and sewerage collection.

It also applies to providing transportation of persons or property for hire within five miles of the city limits (urban transportation classification) and beyond (motor transportation classification).

- These classifications apply whether or not the person performing the work owns the vehicle with which the activity is being performed.

- Examples include taxi cab service, limousine service, and hauling goods belonging to others (hauling for hire).

(15) **How is income reported when the assigned worker is engaging in more than one activity?**

An assigned worker provided by a staffing business to a client may engage in several different activities while on the same job.

The different activities may be taxable under separate B&O tax and/or PUT classifications.

If the staffing business separates the amounts it charges

the client by activities, the separated charges are reported.

If the staffing business does not separate its charge to the client the charge is reported under the classification of the predominant activity.

"Predominant activity" for two worker activities is when more than fifty percent of the worker's time is spent working in one tax classified activity.

"Predominant activity" for more than two worker activities is the activity the worker spends the greatest amount of time doing.

When two or more workers, engaged in different activities, are assigned to one client, the charge for each worker is reported based on the predominant activity of each individual worker.

Example 1:

- A staffing business assigns a housekeeper whose primary job is to clean an apartment (subject to the service and other activities B&O tax classification).

- The job also calls for the housekeeper to prepare one meal per day (subject to retailing B&O tax and retail sales tax).

- The majority (over half) of the time spent is associated with the housekeeping service (apartment cleaning - subject to the service and other activities B&O tax classification).

- No segregated charge is made for the preparation of the meal.

- In this case, the predominant activity is cleaning the apartment.

- Therefore, the gross income received by staffing business from the charge to the client is reportable under the service and other activities B&O tax classification. Retail sales tax will not apply.

Example 2:

- A staffing business assigns a construction worker to a client that is a developer/property owner performing construction-related services (subject to retailing B&O tax and retail sales tax).

- The assigned worker has a commercial driver's license and is only occasionally required to drive the client's truck within the city to pick up a load of gravel (an activity subject to the urban transportation PUT classification).

- The worker also spends about one hour per day helping in the office.

- The predominant activity is the retailing activity of performing construction work because the greatest amount of time is spent performing retailing construction work.

- The staffing business has not segregated charge for the other lesser activities.

- In this case, the staffing business reports the gross

amount charged to the client under the retailing B&O tax classification. Additionally, the staffing business must also collect from the client retail sales tax measured by the gross charge to the client.

Example 3:

- Same facts as Example 2, except the staffing business also provides a receptionist to the client (developer/property owner).

- As demonstrated in Example 2, the staffing business is subject to the retailing B&O tax on the gross amount charged to the client for work done by the construction worker; and retail sales tax must be collected on this charge.

- However, the staffing business is subject to service and other activities B&O tax on the gross amount charged to the client for the receptionist's work. The service and other activities B&O tax classification is the proper classification notwithstanding the client reports under the retailing classification.

(16) Is the staffing business required to keep documentation of the activities their assigned workers performed?

The staffing business must keep documentation showing what services their assigned workers performed.

All available information should be recorded concurrently with the assignment of the worker and the charge for the service.

It is important that the client's labor and skill requirements are detailed up front as much as possible prior to dispatch.

This is particularly important for purposes of billing retail sales tax.

Documentation may be in the form of a copy of a client order or other documented request by a client for a worker.

The documentation must state the specific work to be performed, and/or the worker skills requested by the client.

If the client's request comes in by telephone, the staffing business should ask exactly what type of services are required and write them down on an order form, or as a memo to the client's file.

Also, the worker can provide a written explanation of the services actually performed.

Documentation to support the B&O tax classification must be sufficiently detailed to support the classification reported.

The classification of primary interest to the client is retailing. Only under retailing is the staffing company, as seller of the service, required to collect retail sales tax from the client.

Any other classification which does not directly impact the client may be of less interest to the client. Nevertheless,

because the rates may vary between classifications, it is in the person providing staffing service's best interest to gather enough information to classify all services correctly.

If, subsequent to filing a return, it is later determined that income has been incorrectly classified, amended returns should be submitted to the department to make the appropriate adjustment.