

This rule draft is being proposed under an expedited rule-making process that does not require the agency to hold public hearings. Under no circumstances is this proposed rule to be used as a basis for determining tax liability or eligibility for a tax deduction, exemption, or credit.

AMENDATORY SECTION (Amending Order ET 83-15, filed 3/15/83)

**WAC 458-20-146 National and state banks, mutual savings banks, savings and loan associations and other financial institutions.**

### **Business and Occupation Tax**

~~((Effective March 1, 1970, the legislature repealed RCW 82.04.400 which exempted from the business and occupation tax))~~  
The gross income of national banks, states banks, mutual savings banks, savings and loan associations, and certain other financial institutions ~~((Accordingly, the gross income or gross sales of such institutions will become))~~ is subject to the business and occupation tax according to the following general principles.

**Services and other activities.** Generally, the gross income from engaging in financial businesses is subject to the business and occupation tax under the classification service and other activities. Following are examples of the types of income taxable under this classification: Interest earned (including interest on loans made to nonresidents unless the financial institution has a business location in the state of the borrower's residence which rendered the banking service), commissions earned, dividends earned, fees and carrying charges, charges for bookkeeping or data processing, safety deposit box rentals. See WAC 458-20-14601 Financial institutions--Income apportionment.

The term "gross income" is defined in the law as follows:

"Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

The law allows certain deductions from gross income to arrive at the taxable amount (the amount upon which the business

and occupation tax is computed). Deductible gross income should be included in the gross amount reported on the excise tax return and should then be shown as a deduction and explained on the deduction schedules (~~provided on the reverse side of the reporting form~~). The deductions generally applicable to financial businesses include the following:

(1) Dividends received by a parent from its subsidiary corporations (RCW 82.04.4281).

(2) Interest received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties. (See WAC 458-20-166 for definition of "transient.") (RCW (~~82.04.4291~~) 82.04.4292.)

(3) Interest received on obligations of the state of Washington, its political subdivisions, and municipal corporations organized pursuant to the laws thereof. (RCW (~~82.04.4292~~) 82.04.4291). A deduction may also be taken for interest received on direct obligations of the federal government, but not for interest attributable to loans or other financial obligations on which the federal government is merely a guarantor or insurer.

(4) Gross proceeds from sales or rentals of real estate (RCW 82.04.390). These amounts may be entirely excluded from the gross income reported and need not be shown on the return as a deduction.

**Retailing.** Sales of tangible personal property and certain services are defined as "retail sales" and are subject to the business and occupation tax under the classification retailing. Such sales are also subject to the retail sales tax which the seller must collect and remit to the department of revenue (department). Transactions taxable as sales at retail are not subject to tax under service and other activities.

Following are examples of transactions subject to the retailing classification of the business and occupation tax and to the retail sales tax: Sales of meals or confections, sales of repossessed merchandise, sales of promotional material, leases of tangible personal property, sales of check registers, coin banks, personalized checks(~~(-)~~) (note: When the financial institution is not the seller of these items but simply takes orders as agent for the supplier, the supplier is responsible for reporting as the retail seller. The financial institution has liability for reporting the retail sales tax on sales made as an agent only if the supplier is an out-of-state firm not registered with the department (~~(of revenue)~~)), escrow fees, casual sales (occasional sales of depreciated assets such as used furniture and office equipment--subject to retail sales tax but deductible from the business and occupation tax; see WAC 458-20-106 Casual or isolated sales--Business reorganizations).

**Sales for resale ((certificates))**. When a financial institution buys tangible personal property for resale to its

customers without intervening use, the sales tax is not applicable. In this case the financial institution should give the vendor a resale certificate (~~containing the number of its certificate of registration and its statement that the articles purchased are for resale in the course of its business activities. Resale certificates can be given in blanket form covering all future purchases. (See also WAC 458-20-102.)~~) for purchases made before January 1, 2010, or a reseller permit for purchases made on or after January 1, 2010, to document the wholesale nature of any sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

### Use Tax

The use tax complements the retail sales tax by imposing a tax of like amount on the use of tangible personal property purchased or acquired without payment of the retail sales tax. Thus, when office equipment or supplies are purchased or leased from an unregistered out-of-state vendor who does not collect the Washington state retail sales tax, the use tax must be paid directly to the department (~~of revenue~~). Space for the reporting of this tax will be found on the (~~regular~~) excise tax return. (For more information, see WAC 458-20-178 Use tax.)

**When tax liability arises.** Tax should be reported during the reporting period in which the financial institution receives, becomes legally entitled to receive, or in accord with the system of accounting regularly employed enters the consideration as a charge against the client, purchaser or borrower. Financial institutions may prepare excise tax returns to the department (~~of revenue~~) reporting income in periods which correspond to accounting methods employed by each institution for its normal accounting purposes in reporting to its supervisory authority.

~~((Reporting procedures. Financial institutions subject to the business and occupation tax, retail sales tax, or use tax must secure a certificate of registration from the department of revenue and pay a registration fee of \$15.00. Form 2401, application for certificate of registration, is available at all district offices of the department of revenue or may be obtained by writing directly to the Department of Revenue, Olympia, Washington, 98504.~~

~~Reporting periods will be assigned by the department on the basis of total tax liability incurred. Most financial institutions will be required to report on a monthly basis, although some smaller institutions may qualify for quarterly reporting. Forms for reporting will be mailed shortly before~~

~~the close of each reporting period and will be due and payable on or before the 15th day of the month following. No penalties will be charged if the return is postmarked on or before the last day of the month in which the due date falls.))~~