

This rule is being proposed under an expedited rule-making process that will eliminate the need for the agency to hold public hearings, prepare a Small Business Economic Impact Statement, or provide responses to the criteria for a significant legislative rule. If you object to this use of the expedited rule-making process you must express your objections in writing by July 2, 2007.

AMENDATORY SECTION (Amending WSR 91-05-040, filed 2/13/91, effective 3/16/91)

**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 business and occupation tax does not apply to:)) 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. (~~(RCW 82.04.320.)~~) 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 (~~business and occupation~~) 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 (Resale certificates) for resale certificate 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.

~~((e))~~ 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.

~~((This))~~ 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 ~~((exempted from the business and occupation))~~ 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.

~~((+2))~~ (3) Deductions. ~~((Effective May 18, 1987))~~ 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 ~~((may take a deduction from the measure of the business and occupation tax))~~ for assessments paid by that member to the pool. ~~((See RCW 82.04.4329.))~~ ~~The deduction amount should be shown in the deduction column of the business and occupation tax section on the combined excise tax return, where it will be subtracted from the gross amounts, to arrive at a net taxable amount upon which the actual business and occupation tax is computed. If the deduction cannot be fully used because the assessment total exceeds the gross receipts reported in the business and occupation tax section of the tax~~

~~return, the member may carry forward the unused portion of the deduction to future reporting periods until the deduction is fully taken. The explanation of the deduction should be "Amount paid to Washington state health insurance pool, per RCW 82.04.4329 and WAC 458-20-163."~~) This deduction ((~~does~~)) did not apply to a member who ((~~has~~)) had deducted such assessments from the insurance premiums tax, RCW 48.14.020.

((~~3~~)) (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.

[Statutory Authority: RCW 82.32.300. 91-05-040, § 458-20-163, filed 2/13/91, effective 3/16/91; 87-19-007 (Order ET 87-5), § 458-20-163, filed 9/8/87; 83-07-033 (Order ET 83-16), § 458-20-163, filed 3/15/83; Order ET 70-3, § 458-20-163 (Rule 163), filed 5/29/70, effective 7/1/70.]