

THIS DRAFT IS NOT TO BE CONSIDERED A PROPOSED RULE AND IS ONLY PROVIDED FOR DISCUSSION PURPOSES TO DETERMINE WHAT TOPICS A LATER PROPOSED RULE MIGHT ADDRESS. UNDER NO CIRCUMSTANCES IS THIS DISCUSSION DRAFT TO BE USED TO DETERMINE TAX LIABILITY AND/OR EXEMPTIONS.

AMENDATORY SECTION: (Amending order ET 83-17, filed 3/15/83)

WAC 458-20-148 Barber and beauty shops.

Business and Occupation Tax

Barber and beauty shops are subject to the business and occupation tax as follows:

Retailing. Taxable under the retailing classification upon charges for styling of wigs or hairpieces and upon the gross proceeds of sales of shoe shines and of packaged cosmetics, etc., sold apart from the rendition of personal services.

Service and other business activities. Taxable under the service and other business activities classification upon the gross income from charges for the rendition of personal services, such as hair cutting, shaving, shampooing, tinting, bleaching, setting and the like.

Retail Sales Tax

Barber and beauty shops primarily render personal services as to hair cutting, shaving, shampooing, tinting, bleaching, setting and the like and, therefore are not required to collect the retail sales tax from the customers paying for such services. Sales by supply houses to barber and beauty shops of such articles of equipment as clippers, razors, barber chairs, hair waving machines, etc., and of such supplies as soaps, hair tonics, lotions, cosmetics, dyes, etc., which are used incidentally in the rendering of such personal services are taxable retail sales upon which the retail sales tax must be collected. Shops must collect retail sales tax upon sales and charges shown as taxable under retailing above.

Sales by barber and beauty shops of packaged cosmetics, hair tonics, lotions and like articles are taxable retail sales when sold apart from the rendition of personal services and are subject to the retail sales tax. Sales of such articles by supply houses to barber and beauty shops are sales for resale and are not taxable under the retail sales tax.

Barber shops operating shoe shine stands are required to collect the retail sales tax upon the charges made for shoe shines rendered to customers. Sales by supply houses of shoe polish, dyes, cleaners, etc., which are resold in rendering a shoe shine service are sales for resale and not taxable under the retail sales tax. However, sales to shoe shine stands of brushes, chairs and other equipment which are not resold in rendering such services are taxable retail sales and the retail sales tax must be collected thereon.

(1) **Introduction.** This rule discusses how the business and occupation (B&O), retail sales, use, and litter taxes apply to persons performing personal services, such as barbers, cosmetologists, estheticians, manicurists, and massage therapists. It also discusses how these taxes apply to persons operating salons and other businesses that provide body piercing, tattooing, tanning, steam or Turkish bathing services.

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(2) **Activities conducted by barbers, cosmetologists, estheticians, manicurists, and massage therapists.** Barbers, cosmetologists, estheticians, manicurists, and massage therapists typically conduct a variety of activities. For information concerning the professional licensing requirements of barbers, cosmetologists, estheticians, and manicurists, refer to chapter 18.16 RCW or contact the Department of Licensing, Cosmetology Licensing Program. For information concerning the professional licensing requirements of massage practitioners, refer to chapter 18.108 RCW or contact the Department of Health, Health Professions Quality Assurance Services, Massage Board. Examples of services provided by these persons for which licensing is required include the following.

(a) **Barbers.** Barbers cut, trim, arrange, dress, curl, wave, and shampoo hair of the face neck and scalp.

(b) **Cosmetologists.** Cosmetologists cut, trim, style, shampoo, permanently wave, chemically relax or straighten, bleach, or color hair of the face, neck, and scalp. Cosmetologists may also perform manicuring and esthetic activities.

(c) **Estheticians.** Estheticians care for the skin and temporarily remove superfluous hair using various methods.

(d) **Manicurists.** Manicurists clean, shape, or polish nails of the hands or feet, and apply and remove artificial nails.

(e) **Massage therapists.** Massage therapists externally manipulate or pressure soft tissue for therapeutic purposes using various techniques.

(3) **Application of B&O and retail sales taxes to income.** The nature of the activity determines the application of the B&O and retail sales taxes.

Persons selling gift certificates that may be redeemed for services or merchandise should refer to WAC 458-20-103 (Time and place of sale) for further information about reporting such sales.

(a) **Sales of personal services.** RCW 82.04.050 specifically defines certain personal services as retail sales. The gross income of the business derived from retail sales is subject to the retailing B&O tax and the seller is responsible for collecting retail sales tax from the buyer as measured by the selling price. The gross income of the business derived from personal services that are not specifically defined as retail sales is subject to the service and other activities B&O tax. The retail sales tax does not apply to services taxable under the service and other activities B&O tax.

(i) **Retail taxable personal services.** The following activities are taxable as retail sales:

(A) Tanning salon services.

(B) Steam (sauna) or Turkish bath services.

(C) Tattoo services. Tattoo services also includes permanent cosmetic make-up (also referred to as cosmetic tattooing, micropigmentation, micropigment implantation or dermagraphics) and the removal of tattoos by re-tattooing.

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(ii) **Service taxable personal services.** The following activities are taxable under the service and other activities B&O tax:

- (A) Barber services.
- (B) Cosmetology services.
- (C) Esthetic services.
- (D) Manicure services.
- (E) Body piercing services.
- (F) Massage services.

(iii) **Packaged services.** Salons and similar establishments frequently offer package deals that provide a mix of retail and non-retail personal services. The predominant nature of the services determines whether the package is taxed as a retail sale or a service.

(A) **Example 1.** Salon offers "Day of Beauty" package that includes hair styling, sauna, massage, manicure and pedicure, and catered lunch for one price. These personal services are predominantly service-taxable. Consequently, the gross proceeds of sale are subject to the service and other activities B&O tax and the retail sales tax does not apply. Salon is the consumer of the catered lunch and must pay retail sales or deferred sales tax for the purchase of the meal as discussed in subsection (4) of this rule.

(B) **Example 2.** Salon offers package that includes sauna, tanning session, manicure, pedicure, and catered lunch for one price. These personal services are predominantly retail sales. Consequently, the gross proceeds of sale are subject to the retailing B&O tax and the retail sales tax. Salon is the consumer of the catered lunch and must pay retail sales or deferred sales tax for the purchase of the meal as discussed in subsection (4) of this rule.

(b) **Sales of tangible personal property.** Sales of tangible personal property, such as hair and body care products, combs, brushes, cosmetics, gifts, and other items to consumers are retail sales. Charges for repairing, cleaning, altering, or otherwise improving tangible personal property for consumers are also retail sales. Examples include, but are not limited to charges for the styling of wigs and similar hairpieces and the shining of shoes.

The sale of jewelry items is also a retail sale regardless that piercing services may be offered for "free" with the purchase of such items.

(c) **Chair leasing and licenses to use real estate.** A person who pays a fee for the use of salon or shop facilities and receives no compensation or other consideration from the salon or shop owner for services performed is not an employee. Such a person is an independent contractor.

(i) **Independent contractors.** A person who leases a chair or workstation is subject to the same tax registration and tax reporting requirements as the salon or shop owner. Gross income from performing personal services is subject to tax as provided by this subsection.

For further information, refer to WAC 458-20-101 (Tax registration and reporting) and WAC 458-20-105 (Employees distinguished from persons engaging in business).

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(ii) **Salon or shop owner.** Gross income received from the lease or rental of a chair or workstation is subject to the service and other activities B&O tax.

The lease of the chair represents a license to use real estate rather than a rental of real estate. For further discussion about licenses to use real estate, refer to WAC 458-20-118 (Sale or rental of real estate, license to use real estate) and WAC 458-20-200 (Leased departments).

(4) **Purchases of tangible personal property.** The purchase of tangible personal property by persons providing personal services is subject to retail sales tax unless the property is purchased for resale without intervening use. The buyer is responsible for remitting the retail sales tax (commonly referred to as deferred sales tax) or use tax directly to the department if the seller fails to collect the appropriate retail sales tax.

(a) **Retail purchases.** The purchase of tangible personal property used to provide personal services (use as a consumer) is subject to retail sales tax. Examples of property purchased for use as a consumer include scissors, razors, clippers, curlers, curling irons, dryers, mirrors, chairs, sinks, towels, robes, shampoos, conditioners, lotions, chemical applications, and the like. For further information about use tax, refer to WAC 458-20-178 (Use tax).

(b) **Purchases for resale.** The purchase of tangible personal property for resale as tangible personal property is a purchase at wholesale. Wholesale purchases are not subject to retail sales tax when the buyer provides a resale certificate to the seller as provided by WAC 458-20-102 (Resale certificates). Examples of items that may be purchased at wholesale include hair care and other personal care products, cosmetics, brushes, combs, jewelry, gifts, and other items that will be resold.

(c) **Purchases for dual purposes.** A person who purchases tangible personal property for dual purposes must determine whether the property is principally for resale or for consumption. For further discussion about making purchases for dual purposes, refer to WAC 458-20-102 (Resale certificates).

(i) **Purchases principally for resale.** A person who principally purchases tangible personal property for resale may use a resale certificate as provided in subsection (4) of this rule. A person who principally purchases for resale and uses a resale certificate must report and pay retail sale tax (commonly referred to as deferred sales tax) or use tax based on actual consumption directly to the department.

(ii) **Purchases principally for consumption.** A person who principally purchases tangible personal property for consumption must pay retail sales tax at the time of purchase. A person who principally purchases for consumption and subsequently sells the property at retail may claim a tax paid at source deduction for the cost of the articles resold upon which retail sales tax was previously paid.

(d) **Examples.** The examples in this subsection identify a number of facts and then state a conclusion. These examples should only be used as a general guide. Similar determinations for other situations can be made only after a review of all facts and circumstances.

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(i) **Example 1.** Salon provides a variety of hair and nail care services and makes sales of hair care products and gift items to consumers. Eighty to ninety percent of shampoos, conditioners, hair spray, and nail polishes are purchased for resale while the remaining ten to twenty percent is for use in providing personal services. Salon may give a resale certificate to its supplier and purchase the hair care products and gift items without payment of retail sales tax. Salon must report and pay retail sales tax (commonly referred to as deferred sales) or use tax on the amount it consumes while providing hair and nail care services.

(ii) **Example 2.** Salon purchases chemicals for coloring, straightening, and permanently waving hair. Salon also purchases nail polish removers, nail files and buffers, and artificial nails. Salon uses these items to perform its services. Consequently, Salon is the consumer of these items and is subject to the retail sales tax at the time of purchase. Salon is responsible for reporting and paying retail sales tax (commonly referred to as deferred sales tax) or use tax directly to the department if its supplier fails to collect retail sales tax.

(iii) **Example 3.** Tattoo Studio purchases needles and dyes to apply tattoos. Tattoo Studio is the consumer of these items and is subject to the retail sales tax at the time of purchase. Tattoo Studio is responsible for reporting and paying retail sales tax (commonly referred to as deferred sales) or use tax directly to the department if its supplier fails to collect retail sales tax.

(iv) **Example 4.** Tanning Salon purchases tanning beds, towels, and goggles. Tanning Salon also purchases various magazine subscriptions for clients to read in the waiting room. Tanning Salon is the consumer of these items and is subject to the retail sales tax at the time of purchase. Tanning Salon is responsible for reporting and paying retail sales tax (commonly referred to as deferred sales) or use tax directly to the department if its supplier fails to collect retail sales tax.

(5) **Litter tax.** Chapter 82.19 RCW imposes a litter tax on manufacturers, wholesalers, and retailers of certain products, such as toiletries. Toiletries include products used in personal dressing or grooming, such as hair, nail and other body care products, soaps, powders, colognes, perfumes, cosmetics, etc. Persons who sell toiletries are subject to the litter tax. The tax is in addition to any other taxes that may be due. Thus, in the case of example 1 in Subsection (4)(d)(i) above, Salon must report litter tax on its sales of hair and nail care products to consumers. Salon does not incur liability for the litter tax with respect to those products it uses to provide personal services. The measure of the litter tax is the gross proceeds of sales. For further information about the litter tax, refer to chapter 82.19 RCW and WAC 458-20-243 (Litter tax).