

THIS PROPOSED RULE IS SUBMITTED FOR PUBLIC COMMENTS AFTER INPUT FROM INTERESTED PARTIES AND IS TO BE USED SOLELY FOR DISCUSSION PURPOSES AT THE PUBLIC HEARING ON THE PROPOSED RULE. UNDER NO CIRCUMSTANCES IS THIS PROPOSED RULE TO BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS.

AMENDATORY SECTION (Amending WSR 99-08-090, filed 4/6/99, effective 5/7/99)

**WAC 458-20-131 (~~(Games of chance.)~~) Gambling activities.**

(1) **Introduction.** This (~~(rule)~~) section explains the business and occupation (B&O), retail sales, and use tax reporting requirements of persons operating contests of chance such as pull-tab and punch board games(~~(. It also explains the application of tax to persons conducting amusement games)~~), card games, bingo games, (~~(and)~~) raffles, and persons operating amusement games such as dart-toss games, ball-throw or ball-roll games, and crane games. It also explains the B&O tax reporting requirements of persons engaged in the business of conducting parimutuel wagering, which became effective July 1, 2005. Nonprofit organizations conducting (~~(these games as a part of their)~~) activities for fund-raising ((activities)) purposes should also refer to RCW 82.04.3651, 82.08.02573, and WAC 458-20-169 (Religious, charitable, benevolent, nonprofit service organizations, and sheltered workshops) to determine if a B&O, retail sales, or use tax exemption is available for their activities.

Persons (~~(operating or selling these types of games)~~) conducting the types of activities described above should also be aware that the Washington state gambling commission regulates these activities. These persons should refer to chapter 9.46 RCW (Gambling--1973 Act), Title 230 WAC (Gambling commission), and/or contact the Washington state gambling commission with any questions regarding their licensing and reporting responsibilities with the commission. Persons engaging in the business of parimutuel wagering should refer to chapter 67.16 RCW (Horse racing) and/or contact the Washington horse racing commission for additional reporting responsibilities.

(2) (~~(Measure of tax. The business and occupation (B&O) and retail sales taxes apply to income as described below. These guidelines apply equally whether the game is mechanically or electronically operated.~~

(a) ~~(Pull-tab, punch board, and bingo games.)~~ **Parimutuel wagering.** Effective July 1, 2005, persons engaging within this state in the business of conducting race meets for which a license must be obtained from the Washington horse racing commission are taxable under the parimutuel wagering B&O tax

classification. Chapter 369, Laws of 2005. This tax is in addition to any tax imposed under chapter 67.16 RCW. Unlike the parimutuel tax, the B&O tax applies to both in-state and out-of-state parimutuel wagering. The measure of tax is the gross income of the business derived from parimutuel wagering. For purposes of this classification, "gross income" does not include amounts paid to players for winning wagers, or taxes imposed or other distributions required under chapter 67.16 RCW (i.e., RCW 67.16.102 owners bonus, RCW 67.16.105 fair fund, RCW 67.16.175 breeders award).

**(3) Contests of chance.** Contests of chance means any contests, games, gaming schemes, or gaming devices, other than the state lottery as defined in RCW 67.70.010, in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor in the outcome. The term includes social card games, bingo, raffle, and punch board games, and pull-tabs as those terms are defined in chapter 9.46 RCW. Contests of chance does not include race meets for the conduct of which a license must be secured from the Washington horse racing commission, or "amusement game" as defined in RCW 9.46.0201.

**(a) Taxability of contests of chance on or after July 1, 2005.** Effective July 1, 2005, persons operating contests of chance are taxable under one of two new B&O tax classifications on their total gross income for all contests of chance. Chapter 369, Laws of 2005. Persons whose gross income from contests of chance is less than fifty thousand dollars in a calendar year will report all such income under the "gambling contests of chance (less than \$50,000 a year)" tax classification. Persons whose gross income from contests of chance is fifty thousand dollars or more in a calendar year will report all such income under the "gambling contests of chance (\$50,000 a year or greater)" tax classification.

**(b) Taxability of contests of chance before July 1, 2005.** Before July 1, 2005, persons operating contests of chance were taxable on their gross income under the service and other activities B&O tax classification.

**(c) Measure of tax.** Persons operating contests of chance are subject to B&O tax on the gross income of the business derived from contests of chance. With respect to income from contests of chance, "gross income" of the business does not include the monetary value or actual cost of any prizes that are awarded, amounts paid to players for winning wagers, accrual of prizes for progressive jackpot contests, or repayment of amounts used to seed guaranteed progressive jackpot prizes. In the case of donated merchandise, the operator may deduct the fair-market value of the merchandise. Costs of operating the game, including the amount paid for the purchase of the actual game (e.g., a punch board), may not be deducted.

**Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(i) **Example 1.** ~~Persons operating ((pull-tab, punch board, or)) for-profit weekly bingo games at the Town & Country Social Club are taxable ((under the service and other activities B&O tax classification)) upon ((all "increases")) gross income arising from the ((conduct)) operation of ((such)) their games. ((The term "increases" as used in this subsection, means gross gambling receipts less the monetary value or, in the case of merchandise, the actual cost, of any prizes that are awarded. The actual cost of the merchandise is the amount actually paid by the operator without any markup. In the case of donated merchandise, the operator may deduct the fair market value of the merchandise. While the cost of merchandise prizes may be deducted, other costs of operating the game, including the amount paid for the purchase of the actual game (e.g., a punch board), may not be deducted.~~

~~Prior to April 1, 1999, operators of pull tab and punch board games awarding merchandise as prizes were considered to be selling the prizes for the gross income derived from the games. As a result, this income was subject to the retailing B&O and retail sales taxes.~~

(b) ~~**Card games.** The fees charged to card players as a condition for their participation in card games, whether the fees are based on time, on a per-hand basis, or on a percentage of the wagered amount (commonly referred to as a "rake"), are subject to the service and other activities B&O tax. In those cases where the operator of the card room participates in the card game as a house or central bank, the measure of tax is the amount of winnings less the amount of losses.~~

(c) ~~**Raffles.** Effective April 1, 1999, persons conducting raffles are subject to the service and other activities B&O tax upon all "increases" (as defined in subsection (2)(a) above) arising from the conduct of the raffles. Prior to this date, the measure of tax was the gross income from the sale of raffle tickets or chances without any deduction for the value or cost of any prizes awarded.~~

~~(d)) As their annual gross income from the bingo games is \$30,000, they will report under the gambling contests of chance (less than \$50,000 a year) tax classification.~~

(ii) **Example 2.** The Lucky Card Room (LCR) charges a fee to all card players as a condition for participating in their card games. Depending on the game, the LCR may charge a fee based on time, on a per-hand basis, or on a percentage of the wagered amount (commonly referred to as a "rake"). Their annual gross income from card game fees and percentages of wagers is

\$120,000, and thus they will report under the gambling contests of chance (\$50,000 a year or greater) tax classification.

(iii) **Example 3.** Take A Chance (TAC) is a business offering customers several types of gambling activities, such as pull-tabs, bingo, and punch board games. Based on last year's income and this year's anticipated income, TAC started the year out reporting their gross income under the gambling contests of chance (less than \$50,000 a year) tax classification. As their income from gambling activities was better than anticipated, they passed the \$50,000 threshold. TAC must now start reporting their gross income under the gambling contests of chance (\$50,000 a year or greater) tax classification. They must also reclassify, by filing amended excise tax returns, all income reported for the year under the tax classification for less than \$50,000 a year to \$50,000 a year or greater.

(4) **Amusement games.** Chapter 369, Laws of 2005, made no change to the taxability of income derived from amusement games as defined in RCW 9.46.0201. The gross receipts derived from the operation of ~~((amusement games as defined in RCW 9.46.0201))~~ these games are subject to the service and other activities B&O tax. The cost of any prizes awarded may not be deducted from the measure of tax. ~~((+))~~ Businesses computing their gross income from contests of chance, for reporting under the gambling contests of chance tax classification, should not include income derived from their amusement games.

**For example.** The Lucky Card Room in Example 2 of subsection (3)(c)(ii) of this section also provides games for customers to play that do not involve wagering. Prizes, such as free or discounted meal vouchers or home appliances, are awarded to the winners. The cost of these prizes is not allowed as an adjustment to computing the LCR's gross income.

(a) **What is an amusement game?** The term "amusement game" is defined in RCW 9.46.0201 ~~((defines amusement games to be))~~ as a game played for entertainment in which:

~~((A))~~ (i) The contestant actively participates;  
~~((B))~~ (ii) The outcome depends in a material degree upon the skill of the contestant;  
~~((C))~~ (iii) Only merchandise prizes are awarded; ~~((and~~  
~~((D))~~ (iv) The outcome is not in the control of the operator;

(v) The wagers are placed, the winners are determined, and a distribution of prizes or property is made in the presence of all persons placing wagers at such game; and

(vi) The game is conducted or operated by any agricultural fair, person, association, or organization in such manner and at such locations as may be authorized by rules adopted by the gambling commission under chapter 9.46 RCW.

~~((+ii))~~ (b) **Examples of amusement games.** Crane machines, coin-toss and dart-toss games at fairs and carnivals, and skill-

stop games are examples of games qualifying as amusement games under RCW 9.46.0201. For additional examples of amusement games, refer to WAC 230-20-508 (Authorized amusement games--Types, standards and classifications) issued by the gambling commission.

(c) Coin-operated games are not amusement games. Persons operating coin-operated games that do not qualify under the definition of amusement games in RCW 9.46.0201 (e.g., pinball, video, and pool games) should refer to WAC 458-20-187 (Coin-operated vending machines, amusement devices and service machines) for an explanation of their tax reporting responsibilities.

~~((e))~~ (5) Sales of foods and beverages. Sales of foods, beverages, and other tangible personal property by persons operating or conducting any of the activities described above are retail sales and subject to the retailing B&O and retail sales taxes, unless a specific exemption applies (e.g., see WAC 458-20-124 regarding sales of food and beverages by restaurants, taverns, and similar businesses and WAC 458-20-244 for exemptions available for certain food products). Persons conducting dice games to determine the amount that the customer will pay for food or beverages are subject to tax upon the amount the customer actually pays for the food or drink.

~~((3))~~ (6) Merchandise prizes. Persons operating or conducting any of the activities described ~~((in subsection (2)(a) through (d) of this rule))~~ above are the consumers of any merchandise delivered to the players in the form of prizes or awards. Purchases of this merchandise are purchases at retail and subject to the retail sales tax, unless a specific exemption applies (e.g., see WAC 458-20-244 for exemptions available for certain food products). Purchases of supplies, devices, and other equipment used in the conduct of these ~~((games))~~ activities are also subject to the retail sales tax.

~~((a))~~ If retail sales tax is not collected by the seller, the person conducting these ~~((games))~~ activities must remit the retail sales tax (often referred to as deferred retail sales tax) or use tax directly to the department of revenue. See also WAC 458-20-178 (Use tax).

~~((b) Prior to April 1, 1999, operators of punch board and pull-tab games awarding merchandise as prizes were considered to be selling the prizes for the gross income derived from the games. The purchase of the merchandise prizes by the operators of these games were purchases at wholesale and not subject to either the retail sales or use tax.~~

~~For the purposes of determining the taxability of merchandise prizes awarded by operators of punch board and pull-tab games that were in operation both before and after April 1, 1999, the operator should remit retail sales or use tax on the value of the prizes awarded on or after April 1, 1999.)~~