

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 order ET 83-17, filed 3/15/83, effective 3/14/83)

WAC 458-20-141 Duplicating industry and mailing bureaus.
(~~The phrase "duplicating industry" includes activities involving photostating, blueprinting, xeroxing, and other reproduction processes.~~

~~Business and Occupation Tax~~

~~Duplicators are taxable under the retailing classification upon the gross proceeds received from sales of photostats, blueprints, copies, etc., to consumers, whether the tangible personal property on which the work is recorded is owned by the duplicator or customer.~~

~~The wholesaling all other classification applies to sales for resale in the regular course of the purchaser's business. The duplicator must secure a resale certificate in the usual form.~~

~~Neither of these classifications is applicable, however, if the article sold is delivered to an out of state customer at an out of state point or if an article is produced for commercial or industrial use (see WAC 458 20 134.) In these cases tax is due under the manufacturing classification on the "value of products."~~

~~Mailing bureaus mail material for the publishing industry and also mail folders, bulletins, form letters, advertising publications, flyers, and similar material for other customers. As part of these services, the bureaus also label, fold, enclose and seal. All of these activities come within the definition of "sale at retail" (RCW 82.04.050) as constituting "labor and services rendered in respect to . . . the . . . altering, imprinting or improving of tangible personal property of or for consumers."~~

~~The gross proceeds received by mailing bureaus from charges made to consumers, whether such charges are itemized or lump sum, are taxable under the retailing classification. The gross proceeds are taxable under the wholesaling all other classification where charges (lump sum or itemized) are for tangible personal property resold as such to the purchaser or for services rendered to tangible personal property which becomes a component of an article for resale in the regular~~

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~~course of the purchaser's business. In either case mailing bureaus must secure resale certificates in the usual form.~~

~~Where a mailing bureau purchases stamps, government postals or stamped envelopes for a customer and the customer is charged therefor, the amount of the postage may be deducted from the measure of the business and occupation tax.~~

Retail Sales Tax

~~Sales by duplicators and mailing bureaus of tangible personal property (for example, photostats, blueprints, copies, mailing lists, "Dick" strips, etc.) and/or services rendered to tangible personal property of or for consumers are subject to the retail sales tax. Examples of persons purchasing as "consumers" are, among others, architects, engineers, and advertising agencies.~~

~~Where a mailing bureau purchases stamps, government postals or stamped envelopes for a customer and the customer is charged therefor, the amount of the postage may be deducted from the measure of the retail sales tax due.~~

~~Vendors selling tangible personal property to duplicators and mailing bureaus which will be resold, without any intervening use, are not required to collect the retail sales tax upon taking a resale certificate in the usual form.~~

~~On the other hand, vendors selling to duplicators and mailing bureaus, equipment, supplies or materials which do not become a component part of an article produced for sale, or selling items which are subjected to intervening use before resale, are making retail sales and must collect the retail sales tax.)~~

(1) **Introduction.** This rule discusses the business and occupation (B&O) tax and retail sales and use tax reporting responsibilities of persons who engage in duplicating activities or who provide mailing bureau services in Washington. Persons engaged in printing activities should refer to WAC 458-20-144 (Printing industry).

(2) **Duplicating activities.** Duplicating is the copying of typed, written, drawn, photographed, previously duplicated, or printed materials using a photographic process such as photocopying, color copying, or blueprinting. The tax consequences for persons engaged in duplicating activities and/or selling duplicated products in Washington are as follows.

(a) **Sales of duplicated products.** Income from the sale of photostats, photocopies, blueprint copies and other duplicated

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tangible personal property to consumers is subject to the retailing B&O tax. The measure of tax is the gross proceeds of sale. The seller is also responsible for collecting and remitting retail sales tax on the selling price when making sales to consumers, unless a specific exemption applies. The wholesaling B&O tax applies to the gross proceeds of sale when the buyer purchases the duplicated property for resale without intervening use. The seller must obtain a resale certificate from the buyer to document the wholesale nature of any sale as provided in WAC 458-20-102 (Resale certificates).

If the seller is also the manufacturer of the duplicated products, the seller may be eligible for a multiple activities tax credit. Refer to WAC 458-20-19301 (Multiple activities tax credit) for more information about the credit.

(b) **Duplicating as a manufacturing activity.** A person duplicating tangible personal property for sale or commercial or industrial use (the use of manufactured property as a consumer) is subject to the manufacturing B&O tax classification. For further information about manufacturing activities, refer to WAC 458-20-112 (Value of products), WAC 458-20-134 (Commercial or industrial use), and WAC 458-20-136 (Manufacturing, processing for hire, fabricating).

(c) **Self-service copying.** Some persons provide consumers with access to duplicating equipment to make their own copies (frequently referred to "self-service copying"). These customers are generally charged on a per page basis. The gross proceeds of sales made to consumers for self-service copying is subject to the retailing B&O tax. The seller is also responsible for collecting retail sales tax, unless a specific exemption applies. In such cases, the person providing access to duplicating equipment is not engaged in a manufacturing activity and charges for self-service copying are not subject to the manufacturing B&O tax.

(d) **Potential litter tax liability.** Chapter 82.19 RCW imposes a litter tax on manufacturers (including duplicators), wholesalers, and retailers of certain products. These products include, but are not limited to, newspapers, magazines, and household paper and paper products. Thus, persons who duplicate tangible personal property for sale or who provide facilities for self-service copying may incur a litter tax liability. The measure of the litter tax is the gross proceeds of sale. For

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further information about the litter tax, refer to chapter 82.19 RCW and WAC 458-20-243 (Litter tax).

(e) **Purchases for resale.** The purchase of tangible personal property for resale as tangible personal property or as a component or ingredient of duplicated property is a purchase at wholesale. Examples of items that may be purchased at wholesale include paper, ink, toner, and staples. Refer to WAC 458-20-113 (Ingredients or components, chemicals used in processing new articles for sale). 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).

(f) **Purchases subject to retail sales or use tax.** A person who engages in duplicating activities and acquires tangible personal property for use as a consumer must pay retail sale tax (commonly referred to as "deferred sales tax") or use tax directly to the department when the seller fails to collect retail sales tax. Examples of purchases by a person engaged in duplicating activities that are subject to retail sales tax or use tax include photocopiers, cutting boards, computers, cash registers, and office furniture. For further information about the use tax, refer to WAC 458-20-178 (Use tax).

Persons who engage in duplicating products for sale should refer to WAC 458-20-13601 (Manufacturers and processors for hire--Sales and use tax exemption for machinery and equipment) for information about the sales and use tax exemptions for certain machinery and equipment used directly in a manufacturing operation.

(g) **Example.** Copy Company provides a public area with photocopying equipment and materials (paper, toner, and staples) to allow customers to make their own copies. Copy Company has a separate area in which Copy Company employees make copies for customers. The income attributable to copies made both by the customers and by Copy Company employees is subject to the retailing B&O and retail sales taxes. The value of the copies made by Copy Company employees is also subject to the manufacturing B&O tax, and Copy Company may claim a multiple activities tax credit as described above in subsection (2)(a). Litter tax may be due as explained above in subsection (2)(d).

Copy Company may purchase the paper, toner, and staples that are used or provided in both areas at wholesale, if the

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seller receives a resale certificate . Retail sales or use tax applies to the purchase of photocopying equipment in both areas, though the purchase and/or use of the equipment in the area in which Copy Company employees make copies may qualify for the machinery and equipment exemption described in WAC 458-20-13601.

(3) **Mailing bureau services.** Mailing bureaus, also referred to as mail houses, prepare for distribution mail pieces such as bulletins, form letters, advertising material, political publications, and flyers as directed by their customers. The customer may provide the mail pieces to be prepared for distribution or the mailing bureau itself may sell the material to the customer.

(a) **Mailing bureau activities.** Activities conducted by mailing bureaus include, but are not limited to, picking up, presorting, addressing, labeling, binding, folding, enclosing, sealing, tabbing, and delivering mail pieces to the United States Postal Services or other delivery service provider. The mailing bureau generally charges the customer on a per-piece basis for each separate service provided plus the actual cost of any postage.

(i) **Addressing, labeling, binding, folding, enclosing, sealing, and tabbing services.** Labor and services rendered in respect to altering, imprinting, or improving tangible personal property of or for consumers are retail sales. RCW 82.04.050(2)(a). Thus, the retailing B&O tax applies to income received from consumers for services that include addressing, labeling, binding, folding, sealing, and tabbing. Mailing bureau businesses are also responsible for collecting and remitting retail sales tax when making sales to consumers, unless a specific exemption applies.

(ii) **Presort Services.** Mailing bureaus receive mail pieces that are already printed, addressed, pre-folded or inserted into envelopes from customers who wish to receive United States Postal Service presorted or bulk mail rates. Mailing bureaus commingle and sort mail pieces according to postal regulations and, as necessary, apply postage and routing bar code information. Although mailing bureaus may apply postage and/or bar code information using electronic or mechanical means, the application of such is not a retail sale because the mailing bureau does not alter, imprint, or otherwise improve the mail pieces. The bar code is the physical representation of the

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sorting services provided by the mailing bureau to ensure that mail pieces comply with the postal service requirements for bulk mail rates. Income from presort services is subject to the service and other activities B&O tax.

When presort services are performed in conjunction with activities as described in subsection (3)(i) above, the income is subject to the retailing B&O tax and the mailing bureau is responsible for collecting retail sales tax from the consumer.

(b) **Measure of tax.** The measure of the B&O and retail sales taxes is the gross proceeds of sale and selling price, respectively. These terms include all consideration paid by the buyer, however identified, without any deduction for costs of doing business, such as material, labor, and delivery costs. RCW 82.04.070 and 82.08.010.

(i) **Postage.** Amounts attributed to postage and other delivery costs are included in the measure of tax for both B&O tax and retail sales tax if the costs are part of the consideration paid by the customer. It is immaterial if the amounts charged for postage are stated or shown separately on the sales invoice or reflect actual mailing costs to the mailing bureau. Amounts charged for postage and other delivery costs are not included in the measure of tax only if the amounts are not part of the consideration paid by the customer.

(A) **When is postage part of the consideration paid?** Charges for postage costs are considered part of the consideration paid if the permit to use precancelled stamps, a postage meter, or an imprint account for bulk mailings is in the name of the mailing bureau. The mailing bureau is liable to the post office for payment and the customer's payment of such amounts represents a payment on the cost of the services provided. For further information, refer to WAC 458-20-111 (Advances and reimbursements).

(B) **When is postage not part of the consideration paid?** Charges for postage are not considered part of the consideration paid if the permit to use precancelled stamps or a permit imprint account for bulk mailings is in the customer's name.

(ii) **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 of the facts and circumstances.

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(A) **Example 1.** Mailing Bureau receives mail pieces from Department Store to presort, apply bar code and permit imprint, and deliver the pieces to the post office. Department Store deposits an amount equal to the estimated cost of postage in its own permit imprint account. The estimated postage is not part of the total consideration paid because the Department Store is personally liable to the post office for postage. The total charge, excluding postage, is subject to the service and other activities B&O tax.

(B) **Example 2.** Assume facts as described above in Example 1. Upon delivery of mail pieces, post office determines that the actual cost of postage exceeds the estimated amount deposited by Department Store in its permit imprint account. Post office deducts the additional postage due from Mailing Bureau's account and Mailing Bureau invoices Department Store for the additional amount. The additional postage is part of the total consideration paid because Mailing Bureau is personally liable for the additional postage. Thus, the total charge for all services and additional postage is subject to the service and other activities B&O tax.

(C) **Example 3.** Mailing Bureau picks up preaddressed mail pieces from Political Candidate A. The mail pieces require presorting and delivery to the office only because the mailing pieces were printed with county party's imprint permit. Postage is not a part of the total consideration paid by Candidate A because the county party is personally liable for the postage. Income from services provided to Candidate A is subject to the service and other activities B&O tax.

(D) **Example 4.** Mailing Bureau receives from Political Candidate B mail pieces that require presorting, bar coding, and metered postage. Postage is a part of the total consideration paid by Candidate B because Mailing Bureau is personally liable to the post office for payment of the postage. Income from services provided to Candidate B, including a charge for the cost of postage, is subject to the service and other activities B&O tax.

(E) **Example 5.** Mailing Bureau receives mail pieces from Medical Clinic that are preaddressed and stamped with single-piece rate stamps. Mailing Bureau presorts and applies bar codes to the mail pieces, which qualifies the mail pieces for the lower bulk mail rates. The post office refunds the

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difference between single piece rate and the bulk mail rate to Mailing Bureau. Mailing Bureau retains the amount due for services rendered and remits the balance of excess postage to Medical Clinic. Postage is not a part of the consideration paid because Medical Clinic is personally liable to the post office for postage. Income from services provided to Medical Clinic is subject to service and other activities B&O tax.

(F) **Example 6.** Mailing Bureau prints and prepares mail pieces for Non-Profit Organization's fundraising drive. Mailing Bureau prints and inserts literature into envelopes, addresses and seals envelopes, applies metered postage and bar code information to envelopes, and delivers the presorted mail pieces to the post office. Mailing Bureau is rendering labor and services rendered in respect to altering, imprinting, or improving tangible personal property of or for consumers. Postage is a part of the total consideration paid because Mailing Bureau is personally liable to the post office for payment of the postage. Income from services provided to Non-Profit Organization is subject to the retailing B&O tax. In addition, Mailing Bureau is responsible for collecting sales tax on the selling price, including postage, from Non-Profit Organization.

(G) **Example 7.** Mailing Bureau prints, inserts, folds, applies bar code and precancelled stamps, and presorts advertising for Restaurant. Mailing Bureau is rendering labor and services rendered in respect to altering, imprinting, or improving tangible personal property of or for consumers. Postage is a part of the total consideration paid because Mailing Bureau is personally liable to the post office for payment of the precancelled stamps. Income from services provided to Restaurant is subject to the retailing B&O tax. In addition, Mailing Bureau is responsible for collecting sales tax on the selling price, including postage, from Restaurant.

(H) **Example 8.** Assume facts as described in Example 7 above. However, Restaurant has obtained a permit to use precancelled stamps and has purchased a supply of precancelled stamps that it provides to Mailing Bureau. Mailing Bureau is rendering labor and services rendered in respect to altering, imprinting, or improving tangible personal property of or for consumers. Postage is not a part of the total consideration paid because Restaurant is personally liable to the post office

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for payment of the precancelled stamps. Income from services provided to Restaurant is subject to the retailing B&O tax. In addition, Mailing Bureau is responsible for collecting sales tax on the selling price, excluding postage, from Restaurant.

(I) **Example 9.** Assume facts as described in Example 8 above. Upon Mailing Bureau's delivery of mail pieces, post office determines that actual cost of postage exceeds the amount of precancelled stamps purchased and provided by Restaurant. Post office deducts the additional postage due from Mailing Bureau's advance deposit account and Mailing Bureau invoices Restaurant for the additional amount. The additional postage is part of the total consideration paid because Mailing Bureau is personally liable for the additional postage. Income from services provided to Restaurant, including amount invoiced for additional postage, is subject to the retailing B&O tax. Mailing Bureau is also responsible for collecting sales tax on the selling price, including additional postage, from Restaurant.

(J) **Example 10.** Mailing bureau picks up mailing pieces from Washington City for presorting and delivery to post office. Mailing bureau applies bar code, metered postage, and presorts mail pieces before delivering mail pieces to post office. Postage is a part of the consideration paid by Washington City because Mailing Bureau is personally liable to post office for payment of the postage. Income from services provided to Washington City, including charges for postage costs, is subject to the service and other activities B&O tax.

(c) **Retail sales tax exemption.** RCW 82.08.0265 provides a retail sales tax exemption for sales of or charges made for labor and services rendered in respect to any installing, repairing, cleaning, altering, or improving tangible personal property of or for a nonresident when the seller agrees to and does deliver the property to the purchaser at a point outside this state or delivers the property to a common or bona fide private carrier consigned to the purchaser at a point outside this state. RCW 82.12.0251 provides a comparable use tax exemption.

(d) **Purchases for resale.** The purchase of tangible personal property for resale as tangible personal property or to become a component or ingredient of property upon which mailing bureau services will be performed is a purchase at wholesale.

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Examples of items that may be purchased at wholesale include paper, printing ink (except ink used for bar coding and postage metering equipment), envelopes, and staples. 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). Refer to WAC 458-20-113 (Ingredients or components, chemicals used in processing new articles for sale) for further information regarding ingredients and components.

(e) **Purchases subject to retail sales or use tax.** A mailing bureau business that purchases, leases, or otherwise acquires tangible personal property for use as a consumer must pay retail sale tax (commonly referred to as "deferred sales tax") or use tax directly to the department when the seller fails to collect the retail sales tax. Examples of such property include photocopiers, cutting boards, computers, office furniture, ink and other supplies for bar coding and postage metering equipment, and equipment to address, label, fold, seal, insert, meter, stamp, or sort. For further information about the use tax, refer to WAC 458-20-178 (Use tax).

(f) **Purchases of mailing lists.** Persons acquiring mailing lists are purchasing an information service regardless of the medium used to provide or transfer the information. Thus, the purchase of a mailing list by a mailing bureau business is not subject to either retail sales or use tax.