

**This rule was adopted on an emergency basis effective July 1, 2005. It may be used to determine tax liability until October 28, 2005, unless the Department adopts a permanent rule prior to this date.**

**AMENDATORY SECTION** (Amending WSR 94-05-001, filed 02/02/94, effective 03/05/94)

**WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.** (1) **Introduction.** This section explains the taxation of persons operating establishments such as hotels, motels, and bed and breakfast facilities, which provide lodging and related services to transients for a charge. In addition to retail sales tax and B&O tax, this section explains the special hotel/motel tax, the convention and trade center tax, and the taxation of emergency housing furnished to the homeless.

(a) In addition to persons operating hotels or motels, this section applies to persons operating the following establishments:

(i) Trailer camps and recreational vehicle parks which charge for the rental of space to transients for locating or parking house trailers, campers, recreational vehicles, mobile homes, tents, etc.

(ii) Educational institutions which sell overnight lodging to persons other than students. See WAC 458-20-167.

(iii) Private lodging houses, dormitories, bunkhouses, etc., operated by or on behalf of business and industrial firms or schools solely for the accommodation of employees of such firms or students which are not held out to the public as a place where sleeping accommodations may be obtained. As will be discussed more fully below, in some circumstances these businesses may not be making retail sales of lodging.

(iv) Guest ranches or summer camps which, in addition to supplying meals and lodging, offer special recreation facilities and instruction in sports, boating, riding, outdoor living, etc. In some cases these businesses may not be making retail sales, as discussed below.

(b) This section does not apply to persons operating the following establishments:

(i) Hospitals, sanitariums, nursing homes, rest homes, and similar institutions. Persons operating these establishments should refer to WAC 458-20-168.

(ii) Establishments such as apartments or condominiums where the rental is for longer than one month. See WAC 458-20-118 for the distinction between a rental of real estate and the license to use real estate.

(2) **Transient defined.** The term "transient" as used in this section means any guest, resident, or other occupant to whom lodging and other services are furnished under a license to use real property for less than one month, or less than thirty continuous days if the rental period does not begin on the first day of the month. An occupant remaining in continuous occupancy for thirty days or more is considered a nontransient upon the thirtieth day. An occupant who contracts in advance and does remain in continuous occupancy for the initial thirty days will be considered a nontransient from the start of the occupancy.

(3) **Business and occupation tax (B&O).** Where lodging is sold to a nontransient, the transaction is a rental of real estate and exempt from B&O tax. (See RCW 82.04.390.) Sales of lodging and related services to transients are subject to B&O tax, including transactions which may have been identified or characterized as membership fees or dues. (See WAC 458-20-114.) The B&O tax applies as follows:

(a) **Retailing.** Amounts derived from the following charges to transients are retail sales and subject to the retailing B&O tax: Rental of rooms for lodging, rental of radio and television sets, coin operated laundries, rental of rooms, space and facilities not for lodging, such as

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ballrooms, display rooms, meeting rooms, etc., automobile parking or storage, and the sale or rental of tangible personal property at retail. See "retail sales tax" below for a more detailed explanation of the charges included in the retailing classification.

(b) **Service and other business activities.** Commissions, amounts derived from accommodations not available to the public, and certain unsegregated charges are taxable under this classification.

(i) Hotels, motels, and similar businesses may receive commissions from various sources which are generally taxable under the service and other business activities classification. The following are examples of such commissions:

(A) Commissions received from acting as a laundry agent for guests when someone other than the hotel provides the laundry service (see WAC 458-20-165).

(B) Commissions received from telephone companies for long distance telephone calls where the hotel or motel is merely acting as an agent (WAC 458-20-159) and commissions received from coin-operated telephones (WAC 458-20-245). Refer to the retail sales tax subsection below for a further discussion of telephone charges.

(C) Commissions or license fees for permitting a satellite antenna to be installed on the premises or as a commission for permitting a broadcaster or cable operator to make sales to the guest of the hotel or motel.

(D) Commissions from the rental of videos for use by guests of the hotel or motel when the hotel or motel operator is clearly making such sales as an agent for a seller.

(E) Commissions received from the operation of amusement devices. (WAC 458-20-187.)

(ii) Taxable under this classification are amounts derived from the rental of sleeping accommodations by private lodging houses, and by dormitories, bunkhouses, etc., operated by or on behalf of business and industrial firms and which are not held out to the public as a place where sleeping accommodations may be obtained.

(iii) Summer camps, guest ranches and similar establishments making an unsegregated charge for meals, lodging, instruction and the use of recreational facilities must report the gross income from such charges under the service and other business activities classification.

(iv) Deposits retained by the business as a penalty charged to a customer for failure to timely cancel a reservation is taxable under the service and other business activities classification.

(v) Effective July 1, 2005, the definition of a retail sale excludes charges made for the use of self-service or coin-operated laundry facilities. Chapter 514, Laws of 2005. Thus, gross income received from charges for the use of such facilities is subject to the service and other activities B&O tax. Charges for the use of these facilities are not subject to retail sales tax.

Between July 1, 1998 and June 30, 2005, charges for the use of coin-operated and self-service laundry facilities were included in the definition of a retail sale and taxable as explained below in subsection (4)(d).

(4) **Retail sales tax.** Persons providing lodging and other services generally must collect retail sales tax on their charges for lodging and other services as discussed below. They must pay retail sales or use tax on all of the items they purchase for use in providing their services.

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(a) **Lodging.** All charges for lodging and related services to transients are retail sales. Included are charges for vehicle parking and storage and for space and other facilities, including charges for utility services, in a trailer camp.

(i) An occupant who does not contract in advance to stay at least thirty days does not become entitled to a refund of retail sales tax where the rental period extended beyond thirty days. For example, a tenant rents the same motel room on a weekly basis. The tenant is considered a transient for the first twenty-nine days of occupancy and must pay retail sales tax on the rental charges. The rental charges become exempt of retail sales tax beginning on the thirtieth day. The tenant is not entitled to a refund of retail sales taxes paid on the rental charges for the first twenty-nine days.

(ii) A business providing transient lodging must complete the "transient rental income" information section of the combined excise tax return. The four digit location code must be listed along with the income received from transient lodging subject to retail sales tax for each facility located within a participating city or county.

(b) **Meals and entertainment.** All charges for food, beverages, and entertainment are retail sales.

(i) Charges for related services such as room service, banquet room services, and service charges and gratuities which are agreed to in advance by customers or added to their bills by the service provider are also retail sales.

(ii) In the case of meals sold under a "two meals for the price of one" promotion, the taxable selling price is the actual amount received as payment for the meals.

(iii) Meals sold to employees are also subject to retail sales tax. See WAC 458-20-119 for retail sales tax applicability on meals furnished to employees.

(iv) Sale of food and other items sold through vending machines are retail sales. See WAC 458-20-187 for reporting income from vending machine sales and WAC 458-20-244 for the distinction between taxable and nontaxable sales of food products.

(v) Except for guest ranches and summer camps, when a lump sum is charged for lodging to nontransients and for meals furnished, the retail sales tax must be collected upon the fair selling price of such meals. Unless accounts are kept showing the fair selling price, the tax will be computed upon double the cost of the meals served. The cost includes the price paid for food and drinks served, the cost of preparing and serving meals, and all other costs incidental thereto, including an appropriate portion of overhead expenses.

(vi) Cover charges for dancing and entertainment are retail sales.

(vii) Charges for providing extended television reception to guests are retail sales.

(c) **Laundry services.** Charges for laundry services provided by a hotel/motel in the hotel's name are retail sales. Before July 1, 2005, ((RCW 82.04.050, which defines retail sales, was amended by chapter 25, Laws of 1993 sp.s. to include)) charges for the use of self-service or coin-operated laundry facilities ((located in hotels, motels, rooming houses, and trailer camps for the exclusive use of the tenants. This change became effective July 1, 1993. Prior to that date income from charges to tenants for coin-operated laundry facilities was subject to service B&O tax-)) were included in the definition of a retail sale and subject to tax as provided in subsections (3)(a) and (4). Effective July 1, 2005, such charges are taxable as explained above in subsection (3)(b)(v).

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(d) Telephone charges. Telephone charges to guests, except those subject to service B&O tax as discussed above and in WAC 458-20-245, are retail sales. "Message service" charges are also retail sales.

If the hotel/motel is acting as an agent for a telephone service provider who provides long distance telephone service to the guest, the actual telephone charges are not taxable income to the hotel/motel. These amounts are advances and reimbursements (see WAC 458-20-111 and 458-20-159). Any additional handling or other charge which the hotel/motel may add to the actual long distance telephone charge is a retail sale.

(e) **Telephone lines.** If the hotel/motel leases telephone lines and then provides telephone services for a charge to its guests, these charges are taxable as retail sales. In this case the hotel/motel is in the telephone business. (See WAC 458-20-245.) The hotel/motel may give a resale certificate to the provider of the leased lines and is not subject to the payment of retail sales tax to the provider of the leased lines.

(f) **Rentals.** Rentals of tangible personal property such as movies and sports equipment are retail sales.

(g) **Purchases of tangible personal property for use in providing lodging and related services.** All purchases of tangible personal property for use in providing lodging and related services are retail sales. The charge for lodging and related services is for services rendered and not for the resale of any tangible property.

(i) Included are such items as beds and other furnishings, restaurant equipment, soap, towels, linens, and laundry supply services. Purchases, such as small toiletry items, are included even though they may be provided for guests to take home if not used.

(ii) The retail sales tax does not apply to sales of food products to persons operating guest ranches and summer camps for use in preparing meals served to guests. Sales of prepared meals or other items which require a food handler's permit to persons operating guest ranches and summer camps are subject to retail sales tax. See WAC 458-20-244 for sales of food products.

(h) **Sales to the United States government.** Sales made directly to the United States government are not subject to retail sales tax. Sales to employees of the federal government are fully taxable notwithstanding that the employee ultimately will be reimbursed for the cost of lodging. The department of revenue has identified the following methods of billing or payment which are presumed to be sales directly to the federal government:

(i) The lodging is paid by government voucher or government check payable directly to the hotel/motel.

(ii) Charges made through the use of a VISA I.M.P.A.C. card (International merchant purchase authorization card). The VISA I.M.P.A.C. cards include the embossed legend "U.S. Government Tax Exempt." The account number on each card begins with the prefix "4716."

(iii) For periods prior to November 30, 1993, charges made through Diner's Club Corporate Charge Card (the card contains the statement "for official use only"). There were two Diner's Club Corporate Charge Cards available to federal employees. Only one was sales tax exempt. The card providing the exemption was embossed with the name of the employee followed by the statement "for official use only." This card was used by federal agencies to pay for group lodging. The Diner's Club card program for federal employees ended November 29, 1993.

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(iv) Beginning November 30, 1993, charges made through the use of certain American Express charge cards issued for the use of federal government travelers. Only those cards directly charging a government travel account (central bill account) qualify for the exemption. These cards begin with an account number prefix of "3783-9."

(v) A cash purchase made on behalf of the federal government by a federal employee who gives the seller a federal standard form SF 1165. A cash purchase by a federal employee made on behalf of the federal government qualifies for a sales tax exemption provided that the federal employee presents a federal standard form SF 1165 to document the fact that the purchase is made on behalf of the federal agency out of petty cash funds. The vendor (hotel/motel) is required to sign form SF 1165 to signify receipt of cash for the purchase. The vendor must retain a photocopy of SF 1165, describing the item purchased, to document the sales tax exemption.

(5) **Special hotel/motel tax.** Beginning in October 1987, some locations in the state have been authorized to charge a special hotel/motel tax. (See chapters 67.28 and 36.100 RCW.) If a business is in one of these locations, an additional tax is charged and reported under the special hotel/motel portion of the tax return. The four digit location code, the amount received for the lodging, and the tax rate must be completed for each location in which the lodging is provided. The tax applies without regard to the number of lodging units except that the tax of chapter 36.100 RCW applies only if there are forty or more lodging units. The tax only applies to the charge for the rooms to be used for lodging by transients. Additional charges for telephone services, laundry, or other incidental charges are not subject to the special hotel/motel tax. Neither is the charge for use of meeting rooms, banquet rooms, or other special use rooms subject to this tax. However, the tax does apply to charges for use of camping and recreational vehicle sites.

(6) **Convention and trade center tax.** Businesses selling lodging to transients, having sixty or more units located in King County, must charge their customers the convention and trade center tax and report the tax under the "convention and trade center" portion of the tax return. See RCW 67.40.090.

(a) A business having more than sixty units which are rented to transients and nontransients will be subject to the convention and trade center tax only if the business has at least sixty rooms which are available or being used for transient lodging. For example, a business with one hundred forty total rooms of which ninety-five are rented to nontransients is not subject to the convention and trade center tax.

(b) The tax only applies to the charge for the rooms to be used for lodging by transients. Additional charges for telephone services, laundry, or other incidental charges are not subject to the convention and trade center tax. Neither is the charge for use of meeting rooms, banquet rooms, or other special use rooms subject to the convention and trade center tax.

(c) The four digit location code, amount received for the lodging, and the tax rate must be completed for each location in which the lodging is provided. However, the tax does apply to charges for camping or recreational vehicle sites. Each camp site is considered a single unit.

(7) **Furnishing emergency lodging to homeless.** The charge made for the furnishing of emergency lodging to homeless persons purchased via a shelter voucher program administered by cities, towns, and counties or private organizations that provide emergency food and shelter services is exempt from the retail sales tax, the convention and trade center tax, and the special

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hotel/motel tax. This exemption became effective July 1, 1988. This form of payment does not influence the required minimum of transient rooms available for use as transient lodging under the "convention and trade center tax" or under the "special hotel/motel tax."