RESTAURANT GUIDE

TO WASHINGTON STATE EXCISE TAXES

Summer 2003

REVENUE
Washington State Department of Revenue
Taxpayer Services Division

Taxpayer Rights and Responsibilities

THE TAXPAYERS OF THE STATE OF WASHINGTON HAVE THE RIGHT TO:

- Simple and prompt administrative process for tax refunds and credits.
- Timely, fair, and equitable treatment with dignity and respect.
- Accurate, written information on reporting instructions, appeal procedures, refund claims, and reasons for assessment.
- Public hearings on proposed rules.
- Review and appeal of assessments, business registration revocation, and adverse rulings.
- Remedies when statutes and rules are found to be unconstitutional.
- Confidentiality of financial and business information.

THE TAXPAYERS OF THE STATE OF WASHINGTON HAVE THE RESPONSIBILITY TO:

- Register with the Department of Revenue.
- Know their tax reporting obligations and seek instructions when they are uncertain.
- Keep accurate and complete business records.
- File returns and pay taxes in a timely manner.
- Ensure the accuracy of the information entered on their tax returns.
- Substantiate claims for refund.
- Notify the Department of Revenue and pay taxes promptly when closing a business.

RCW 82.32A

Dear Washington Taxpayer,

By operating a business in Washington State, you are making an important investment in Washington's economy. Excise taxes are an essential part of Washington's tax structure. Tax dollars generated by business activities fund many vital state and local services.

The *Restaurant Tax Guide* is designed to help you understand how tax applies to your business activity.

This guide includes information and discussion on tax issues encountered by businesses such as:

Restaurants	Coffee shops
Cafés	Delicatessens
Bakeries	Snack bars
Espresso stands	Caterers

We hope you find this publication helpful and informative. The information is current at the date of publication, however, tax laws, their interpretation, and their application can change because of legislative action, reviews, or court decisions. This publication will not reflect any changes that may occur after the date of printing.

The information in this guide is general in nature and does not replace or substitute Washington rules or laws nor is it intended to be a statement of Department of Revenue policy. For more information or to get answers to specific questions, please contact the Department of Revenue at one of the following:

Telephone Information Center: 1-800-647-7706

Web Site: http://dor.wa.gov

Mailing Address: Washington Department of Revenue
Taxpayer Services Division
PO Box 47478
Olympia, WA 98504-7478

We appreciate the Washington Restaurant Association's assistance in developing a guide to best fit the needs of the restaurant industry members.

Sincerely,

Taxpayer Services Division

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Common Terms

Business and Occupation (B&O) Tax: Revised Code of Washington (RCW) 82.04.220 imposes a B&O tax on persons conducting business activities within the state of Washington. The B&O tax is a gross receipts tax and applies to the "gross amount" or "gross income" of the business. No deductions are allowed for labor, materials, taxes or other costs of doing business.

The tax rate and classification vary depending upon the specific business activity. For example, persons engaging in a retail activity would be subject to retailing B&O tax. If you perform more than one business activity you may be subject to B&O tax under more than one tax classification. The state B&O tax is reported on the Combined Excise Tax Return (CETR).

Consumer: Any person who uses tangible personal property or receives services defined as retail sale for personal use or to conduct various business activities.

Combination Business: A business that sells both taxable and nontaxable goods at one location. Sellers operating a combination business must collect sales tax on **all** sales unless the sales are properly segregated between taxable and non taxable. A cash register or electronic checking machine that is programmed to identify and separately tax sales of taxable goods is sufficient segregation.

Gross Amount: The "gross proceeds of sale" or "gross income of the business" without deduction for the costs of doing business or any other expenses.

Master Application: The form required for registering your business with one or more state agencies. Upon submitting the Master Application you will receive a **Unified Business Identifier (UBI) Number/(DOR Registration number)** and a Master License to post at your business location.

RCW: Revised Code of Washington; state laws.

Resale Certificate: A buyer's written statement that they are purchasing goods or retail services for resale in the normal course of business and not for their own use.

Restaurant: Any business that has a special space and accommodation where food and beverages are regularly sold to the public for immediate, but not necessarily on-site, consumption. It includes but is not limited to:

lunch counters	diners
coffee shops and stands	espresso shops/bars
concession stands and counters	delicatessens
cafeterias	bakeries

Common Terms (continued)

It also includes space and accommodations located within hotels, motels, lodges, boarding houses, bed and breakfast facilities, hospitals, office buildings, schools, colleges or universities, if a separate charge is made for food and beverages.

The term "restaurant" does not include grocery stores, mini-markets, or convenience stores. Businesses making sales through vending machines or through mobile sales units such as catering trucks or sidewalk vendors of food or beverage items are also excluded.

Retail Sales Tax: Retail sales tax is imposed on the buyer of goods and retail services. The law requires persons making retail sales to collect the tax. The sales tax was adopted in Washington State in 1935. It remains the main source of state revenue.

Sales tax applies to the "selling price" which is defined as all consideration received by a seller from a buyer. For this reason the selling price includes charges such as mandatory gratuities, shipping, handling, and labor components of a sale.

The term "sales tax" refers to the state and local portion of the tax. Tax monies collected by businesses are considered trust funds of the state and must be remitted to the Department of Revenue.

UBI/Department of Revenue (DOR) Registration Number: Sometimes called a registration, tax, "C," or resale number, the Unified Business Identifier (UBI) number is a nine-digit number used to identify registered businesses.

Use Tax: A tax on the use of goods in Washington when the state's sales tax has not been paid. The sales tax and use tax work together to form a comprehensive tax on consumption of tangible personal property in Washington**.** Either the sales tax or use tax apply, not both. Use tax rates and sales tax rates are the same. Like sales tax, use tax is a combined state and local tax. Use tax is due at the time the taxable goods are first used in the state.

WAC: Washington Administrative Code; rules that carry the weight of law and explain how the law is administered.

Business and Occupation (B&O) Tax

B&O tax classifications

The most common B&O tax reporting classifications for restaurants include: Retailing, wholesaling and service and other activities.

Retailing: Gross income from sales to consumers of meals/prepared food, beverages, cigarettes and miscellaneous items of tangible personal property.

Wholesaling: Gross income from sales of meals/beverages to persons other than consumers. For example, sales of meals to a nonprofit organization that is reselling the meals as part of a fund raising activity.

Note: *To document a wholesale sale, the seller must obtain a completed resale certificate from the buyer. (WAC458-20-102)*

Service and other activities: Gross income from "other" sources including: compensation or commissions received for allowing placement of coin-operated machines on the premises (coin operated telephones, ATM machines, cigarette machines, candy, etc.), income from pull-tab, punchboard, bingo games, and allowing patrons access to the Internet. (See *Games, Gambling and Other.)*

Note: *Washington cities may also impose a B&O tax. The Department of Revenue does not administer the B&O tax imposed by cities.*

B&O tax exemptions and deductions

The law allows an exemption or deduction from the measure of the B&O tax for the following:

- **Interstate sales:** Sales of prepared foods delivered to customers outside the state. For example, pizza.
- **Bad debts or dishonored checks:** The net amount (before tax) of a dishonored check is deductible to the extent it was taken as payment for goods or services and was included in amounts previously reported. Deduction is allowed at the time the debt is actually charged off the books of account.

Note: *Any amounts subsequently recovered must be included in gross income and reported. .*

References: RCW 82.08.0293; WAC 458-20-119; 458-20-124; 458-20-244 and 458-20-196

Collecting Sales Tax

Sales of prepared food

Unless a specific exemption applies, retail sales tax applies to sales of prepared food by a person required to have a food and beverage service worker's permit under RCW 69.06.010 (handling unwrapped or unpackaged food).

Taxable sales:

- Prepared foods
- Deli trays
- Salad bar, and sandwiches prepared by the seller
- Pizza, home delivered pick up or "take and bake"
- All beverages in unsealed containers (coffee, tea, hot chocolate, lemonade)
- Carbonated beverages
- Bottled water
- Beer, wine and cocktails (alcoholic beverages)

Note: *sales of foods are subject to retailing B&O tax.*

Nonfood sales (t-shirts, etc.)

A restaurant must also collect retail sales tax on sales of other items such as t-shirts, postcards, cups, cigarettes, tobacco products, etc. Gross receipts are subject to B&O tax under the retailing classification.

Exempt sales - exemptions and deductions

The law provides several specific sales tax exemptions and deductions for sales of food products. Although **exempt from sales tax, RTA, and KCFB**, the following sales are still subject to B&O tax under the retailing classification.

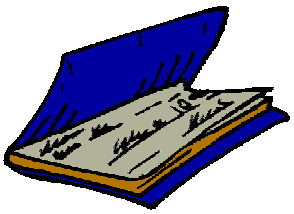
- **Sales of baked goods by a bakery (unless sold as part of a meal or with a beverage in an unsealed container)**
- **Sales of meats or cheeses sliced and/or wrapped in any quantity determined by the buyer**

Note: *These exemptions apply only if the seller properly segregates between taxable and nontaxable sales. See "Bakeries," "Delicatessens" and "Combination Business."*

- **Sales to certain foreign diplomats/officials:** The buyer must present an exemption card at the time of purchase. A colored stripe on the card identifies the level of exemption granted to foreign diplomats.
- **Interstate sales:** Sales of prepared food delivered to the customer outside the state such as pizza delivery.

Collecting Sales Tax (continued)

Exempt sales - exemptions and deductions



- **Sales of prepared food to nonprofit organizations engaging in a fund raising activity:** The nonprofit organization must provide a completed resale certificate to the restaurant. The sale is subject to B&O tax under the wholesaling classification.

- **Bad debts or dishonored checks:** The net amount (before tax) of a dishonored check is deductible to the extent it was taken as payment for goods or services and was included in amounts previously reported. Deduction is allowed at the time the debt is actually charged off the books of account.

Note: *Any bad debt amount that is subsequently recovered must be included in the gross sales amount and reported.*

References: RCW 82.08.0293; WAC 458-20-119; WAC 458-20-196; WAC 458-20-124; WAC 458-20-107 and WAC 458-20-110

Paying Sales Tax

Taxable purchases

As a consumer a restaurant must **pay** retail sales or use tax on purchases of goods or retail services that it uses or consumes in the business. Examples of items subject to tax include:

- Chairs, tables and other furnishings
- Dishes, silverware and plastic trays
- Guest checks
- Janitorial supplies
- Pest control
- Tap cleaning
- Vending machines (purchases or rentals)
- Matches
- Equipment (ovens, grills, coffee makers, etc.
- Repair parts and labor

Goods for resale

Purchases of goods for resale are **not** subject to retail sales tax. A restaurant may use a resale certificate to purchase the following:

- Inventory/meal ingredients
- Liquor, beer, and wine
- Soft drinks and bottled water
- Paper/plastic plates, cups, lids, and plastic utensils
- Paper napkins, toothpicks and straws
- "To-go" food containers

Note: *Persons preparing food at a retail location do not qualify as manufacturers and therefore do not qualify for the manufacturing machinery and equipment (M&E) sales and use tax exemption. (RCW 82-08-02565)*

References: RCW 82.08.0293, WAC 458-20-124; WAC 458-20-244; WAC 458-20-102; and WAC 458-20-178

Use Tax

Use Tax applies when sales tax is not paid

Generally, when you purchase taxable goods or services in Washington the seller will collect retail sales tax. However, there are many instances where a seller will not collect Washington's retail sale tax. The most common circumstances where use tax will apply include:

- Goods are purchased from someone who is not authorized to collect sales tax such as an unregistered individual.
- Goods are purchased from an out of state retailer (Internet or mail order).
- Goods are purchased for resale but are consumed instead of resold.
- Goods are purchased in a state with no sales tax or a lower sales tax rate.
- Personal property is acquired with the purchase of real property.

To report use tax, total your taxable purchases and list the amount on the use tax lines (state & local) of the Combined Excise Tax Return.

Note: *Sales tax applies to the selling price whereas use tax applies to the value. The local use tax rate is determined by the location where the goods are used.*

References: RCW 82.08.020 and RCW 82.12.020; WAC 458-20-178

Local Sales/Use Tax

Place of sale and local sales/use tax

For a restaurant, the place of sale is the location of the restaurant. Therefore, persons operating a restaurant should collect local tax based on the location of the restaurant.

When reporting use tax, the correct location code is the location of use.

For persons performing "catering" services the correct local sales tax rate is the rate at the location where the catering service is performed (where the meal is prepared). If significant services are performed at both the caterer's location and the customer's location, local tax applies based on the location of the customer. (See *Caterers*)

A complete list of location codes and tax rates is available in the *Tax Return Information and Local Sales and Use Tax* flyer that is mailed each quarter with the Combined Excise Tax Return.

Note: *The local tax code used on the tax return determines how the Department will distribute local sales and use taxes. Because local governments depend upon these taxes to fund local services, it's important to use the correct location code.*

Other local taxes

In addition to collecting the state and local sales tax, sellers in certain locations may be required to collect additional local taxes.

- **Regional Transit Authority (RTA):** Sellers located in portions of King, Pierce, and Snohomish counties must collect an additional 0.4 percent local tax.

- **King County Food & Beverage Tax:** Restaurants located in King County must collect an additional 0.5 percent King County food and beverage tax on sales of meals and beverages. This tax is in addition to the RTA tax.

Note: *The King County food and beverage tax does not apply to sales by grocery stores, mini-markets, or convenience stores.*

References: RCW 82.14.020; RCW 82.08.0293; WAC 458-20-124; WAC 458-20-244; WAC 458-20-145; WAC 458-20-12401; Local Sales and Use Tax Changes flyer

Bakeries

What is a "bakery" and what is considered a "baked good?"

For tax purposes a "**bakery"** is a place that prepares baked goods. The term **"baked goods"** means any food products of which flour or meal is a **principal ingredient** that are generally sold by a bakery.

Baked goods include breads, rolls, bagels, biscuits, croissants, pretzels, donuts, pastries, pies, cakes, tortes, muffins, cookies, tortillas, etc. It does not include candy or pizza.

Sales of baked goods by a bakery

Although generally, retail sales tax applies to sales of food products by a person required to have a food and beverage service worker's permit, Washington law provides a sales tax exemption for the sale of **baked goods** by a **bakery**.

Therefore, bakeries that sell **only** baked goods are not required to collect retail sales tax. The fact that baked goods may be sold whole, by the slice, or "to go" does not change the tax application.

The exemption for "baked goods" **does not** apply when baked goods are sold as part of a meal or with a beverage in an unsealed container.

What if I sell both baked goods and other prepared foods?

A bakery that also sells prepared foods or beverages is considered a combination business. As a combination business, the bakery must segregate the taxable and nontaxable sales or collect sales tax on all sales. (See *Combination Business* and *Collecting Sales Tax.*

Which foods and beverages are subject to sales tax?

A bakery must collect sales tax on sales of:

- Foods prepared on the premises (sandwiches, soups, etc.)
- Any baked good sold as part of a meal
- Beverages in unsealed containers such as coffee, coffee drinks, tea, juice, etc.
- Any baked good sold with a beverage in an unsealed container
- Carbonated beverages
- Bottled water

Note: "to go" cups with a lid do not qualify as a sealed container.

Bakeries (continued)

Which foods and beverages are not subject to sales tax?

If the bakery properly segregates taxable and nontaxable sales, the bakery may sell the following without collecting retail sales tax.

- Any baked good (that is not purchased with a beverage in an unsealed container or as part of a meal)
- Noncarbonated beverages in a sealed container (except bottled water)
- Food products that are prepackaged by the manufacturer such as potato chips

Sales tax applies in part

A bakery that segregates sales must collect sales tax in part when selling a taxable food with a nontaxable food. For example, when a customer purchases a:

- Bottle of water (sealed) with any baked good (tax applies to the bottled water but does not apply on the baked good)
- Sandwich, salad, piece of pie, and a sealed container of juice (tax applies on the sale of the sandwich, salad, and piece of pie. Tax does not apply to the juice because it is an exempt food product.)
- Sandwich, bag of chips, donut, and a cup of coffee (Sales tax applies on the sale of the sandwich, donut and cup of coffee. The bag of chips is an exempt food product and is not subject to tax.)
- Soda pop in a sealed container and any baked good (Sales tax applies to the sale of soda pop but does not apply on the baked good)

Note: *Sales of baked goods baked by others* ***do not*** *qualify for the exemption for "baked goods" but may qualify as an exempt food product if sold in a sealed package that was packaged by the baker or manufacturer.*

References: RCW 82.08.0293; WAC 458-20-124; WAC 458-20-244; WAC 458-20-119 and WAC 458-20-12401

Banquet Room Rental

Does sales tax apply to banquet room charges?	If a separate charge is made for the use of a banquet room, retail sales tax does not apply (hotels, see below). This income is subject to B&O tax under the *service and other activities* classification. If a single charge is made for both a banquet room and meals/drinks, retail sales tax, as well as retailing B&O tax applies to the total charge. In all cases, hotel and motel businesses must collect retail sales tax on banquet room charges whether separately stated or not. Hotel and motel businesses should refer to WAC 458-20-166. ***Note:*** *Mandatory gratuities are part of the selling price of the food or drinks even if separately stated. See Gratuities.*

Caterers and Catering

Do caterers collect sales tax?

Caterers must collect retail sales tax when selling meals to consumers. Tax applies regardless of where the caterer prepares the meals or whether the caterer uses ingredients provided by the customer. Sales of meals are also subject to B&O tax under the *retailing* classification.

Tax applies based on the location where the catering service is performed. If significant services are performed at both the caterer and customer's locations, the correct local tax rate is rate at the location of the customer.

Caterers that sell to persons other than consumers may accept a properly completed resale certificate and report the amount of the sale under the *wholesaling* B&O tax classification. Retail sales tax does not apply.

Does sales tax apply to a caterer's purchases?

Caterers must pay retail sales or use tax when they purchase or rent items for use in the business. The tax applies even if the caterer bills the customer for the use of the items. **Taxable items include:**

- Plates
- Silverware
- Glasses
- Cooking equipment
- Linens (cloth napkins and table clothes) and tents
- Serving containers and utensils
- Decorations
- Rentals of any of the above items by a caterer.

Does the King County food and beverage tax apply?

Restaurants located in King County that perform catering services must collect the King County food and beverage tax. The KCFB tax applies only to meals and beverages. Separate charges made for use of linens, glassware, etc., are not subject to the tax.

A caterer that does not meet the definition of a "restaurant" (has no facilities for preparing food/prepares food at the customers location) is not required to collect the King County food and beverage tax.

Reference: WAC 458-20-124; WAC 458-20-12401 and WAC 458-20-119

Combination Business

What is a combination business?	A "combination business" is a business that sells both taxable and nontaxable goods at one location. Sellers operating a combination business must collect sales tax on **all** sales unless the sales are properly segregated between taxable and non taxable. A cash register or electronic checking machine that is programmed to identify and separately tax sales of taxable goods is sufficient segregation.

References: RCW 82.08.0293, WAC 458-20-124, WAC 458-20-119

Coupons, Gift Certificates & Free Meals

What amount is subject to tax when a customer uses a two-for-one coupon?

Selling meals on a "two for one" or similar basis is not giving away a free meal, but rather selling meals at a discounted price. *Retail sales tax* and *retailing* B&O tax apply to the amount that is actually received by the seller.

Example: A customer uses a two-for-one coupon to purchase two meals costing $10 each. Tax applies to $10, which is the actual amount charged for the two meals. If extra items are sold such as beverages tax applies to $10 plus the amount charged for the beverages.

Do I need to collect sales tax when I sell a gift certificate?

Retail sales tax does not apply to the sale of a gift certificate or gift card. Tax applies to the total cost of the meal at the time the gift certificate or card is actually redeemed.

Example: A customer purchases a $25 gift certificate in July. A sale has not really occurred at this time and no tax applies. In August the customer redeems the certificate and purchases a meal costing $30. Retail sales tax applies to $30. The restaurant charges the customer $30 plus tax. The amount of the gift certificate is then applied as a cash payment toward the total amount due. The customer pays the total bill less the $25 certificate.

Note: *For information about unredeemed or expired gift certificates, see "Unclaimed Property."*

Does tax apply to free meals?

If a restaurant provides a free meal to a person other than an employee, the meal is **not** subject to retail sales tax or use tax. However, if carbonated or alcoholic beverages are given away, use tax applies to the value.

Note: Meals provided to employees are presumed to be in exchange for services and are not considered free meals. See Employee Meals.

References: WAC 458-20-119; WAC 458-20-124;WAC 458-20-108 and ETA 408.08.108

Cover Charges

Does sales tax apply to cover charges?	A cover charge is generally a fee that is collected from guests to allow guests entry to a specific event or activity. The tax application depends upon the specific activity for which the charge is made. • Retail sales tax applies to cover charges that provide a guest the opportunity to dance or to participate in a contest, such as karaoke. Gross receipts are subject to B&O tax under the *retailing* classification. Sales tax may be included in the amount charged if it is properly posted that tax is included. Refer to *Including Sales Tax in the Price.* • Retail sales tax does not apply fees collected for the privilege of listening to music or watching a pay-per-view show, and no dance floor is available. The gross amount received is subject to B&O tax under the *service and other activities* classification.

Delicatessens

Which foods and beverages are subject to sales tax?

Delicatessens offer a variety of foods and beverages for sale. Some foods are prepared by the deli such as sandwiches, soups, and salads. A deli may also sell meats, cheeses and other foods that are not prepared by the deli.

Although generally, retail sales tax applies to sales of food by a person required to have a food and beverage service worker's permit, Washington law provides a sales tax exemption for the sale of meat and cheese sliced and/or wrapped, in any quantity determined by the buyer, sold by delicatessens.

Because of these dual operations, a deli is considered a combination business. If the deli properly segregates taxable and nontaxable sales the deli need only collect sales tax on sales of prepared foods and beverages that require the seller to have a food service worker's permit. See *Collecting Sales Tax* and *Combination Business*.

Taxable foods and beverages include:

Any prepared food such as:

- Sandwiches
- Soups
- Salads
- Beverages in unsealed containers such as coffee, coffee drinks, tea, juice, etc.

Note: *"to go" cups with a lid do not qualify as a sealed container*

- Carbonated beverages
- Bottled water

Exempt foods and beverages include:

- Meats and cheeses (wrapped in a quantity determined by the customer)
- Fresh fruit/vegetables
- Sealed noncarbonated beverages (except water)
- Canned or prepackaged food products

References: RCW 82.08.0293 and WAC 458-20-244

Employee Meals

Are employee meals subject to tax?

Meals provided to employees are subject to *retail sales tax* and *retailing* B&O tax. The tax applies whether the employee is charged for the meal or not.

The amount subject to tax is either the actual charge to the employee (if reasonable) or if there is no charge to the employee, the cost of the ingredients. A "reasonable charge" means at least the cost of the ingredients in the meal.

A restaurant that does not maintain a record of employee meals may use an estimate to determine the meal count. The estimate should be based on the restaurant's actual employee meal policy. For example, the restaurant's policy may be to provide a meal to every employee working 5 hours or more.

Without a written policy, the following formula is used to determine meal count:

- Those employees working shifts up to five hours, one meal; and
- Employees working shifts of more than five hours, two meals.

References: RCW 82.04.040 and RCW 82.08.010; WAC 458-20-124; WAC 458-20-119

Espresso Stands

Which food and beverage sales are subject to sales tax?

Espresso stands and coffee shops generally sell coffee drinks. Many also sell sandwiches, soups, pastries, and other foods prepared on the premises.

Retail sales tax applies to sales of food or beverages by a person that is required to have a food and beverage service worker's permit. Therefore, sales of foods and beverages prepared on the premises are subject to retail sales tax. Tax also applies to sales of unpackaged foods handled on the premises such as pastries that are not packaged and wrapped by the manufacturer or baker. Such sales are also subject to B&O tax under the retailing classification.

Note: *"to go" cups with a lid do not qualify as a sealed container.*

Retail sales tax does not apply to sales of prepackaged foods that are packaged and sealed by the baker or manufacturer.

For example, retail sales tax does not apply to sales of sandwiches, salads and pastries that were prepared, packaged, and sealed off-site if sold in the original packaging. Foods sold in this manner qualify as exempt food products. Although sales tax does not apply, sales of exempt food products are subject to B&O tax under the retailing classification.

Note: *the business must collect sales tax on all sales unless the business properly segregates the taxable and tax-exempt sales.*

Can I include the sales tax in my sales price?

Sales tax can be included in the sales price but only if the price list and other price information clearly indicate that sales tax is included. See *Including Sales Tax in the Price*.

References: RCW 82.08.0293; WAC 458-20-124; WAC 458-20-244; WAC 458-20-119; WAC 458-20-12401

Games, Gambling and Other Income

How does tax apply to games and gambling?

Many restaurants offer entertainment in the form of games. The restaurant may own the games or receive commission for allowing the games to be placed in the restaurant.

Commissions – Income for allowing the placement of vending machines or games is subject to B&O tax under the *service and other activities* classification. (See *Vending Machines*)

Pool/Darts/Shuffleboard – These activities are retail sales. Gross receipts are subject to *retail sales tax* and the *retailing* classification of the B&O tax.

Video games/amusement devices includes slots, pinball, electronic darts, and other machines or devices that permit the patron to see, hear, or read something of interest. Gross receipts are subject to B&O tax under the *service and other activities* classification. **Note: Sales or use tax applies to the purchase of the machines.**

Internet Access – Gross receipts for allowing customers access to the Internet is subject to B&O tax under the *service and other activities* classification.

Card Rooms – Gross receipts from operating card rooms is subject to B&O tax under the *service and other activities* classification.

Pull Tabs and Punchboards – The "increase" from pull tab and punchboard games is subject to B&O tax under the *service and other activities* classification.

Games of chance – The "increase**"** from pools, dice games, keno (lottery) and similar games of chance are taxed under *service and other activities* B&O tax classification on the "increase."

Note: *"Increase" means gross gambling receipts less the monetary value, or in the case of merchandise, the actual cost, of any prizes awarded. Actual cost is the amount actually paid (without markup). For donated merchandise, cost is the fair market value.*

Reference: WAC 458-20-187

Gratuities

Are gratuities subject to tax?

Retail sales tax does not apply to tips or gratuities received under circumstances that are clearly voluntary. However, if the gratuity is added to the bill such that it is a mandatory charge, the charge becomes part of the selling price subject to retail sales tax and retailing B&O tax.

A gratuity **is not** voluntary when the amount is agreed upon and the contract document states that a gratuity "will be added." For example, a restaurant may have a policy of adding a 15% charge to the bill for groups of five or more customers. When a gratuity is applied in this manner, the entire charge is subject to retail sales tax as well as retailing B&O tax.

Example: The total food bill for a group of five is $100. A mandatory tip of 15% is added on for a total bill of $115. Retail sales tax should be calculated on $115. Assuming an 8% tax rate the total with tax is $124.20. Additionally, $115 is the gross sales amount subject to retailing B&O tax.

References: WAC 458-20-119; WAC 458-20-124

Including Sales Tax in the Price

Can I include the sales tax in my sales price?

Generally, sales tax must be separately stated on the sales receipt that is given to the customer. However, there are instances when the sales tax may be included in the advertised price.

A restaurant may advertise and/or sell meals, beverages, or other items at prices including sales tax **but only if the menu and other price information clearly indicate that sales tax is included in the price.**

Calculating the taxable amount: If sales tax is included in the price, the amount of tax may be backed out of "gross receipts" to arrive at the amount subject to tax.

Example: A glass of wine is sold for $5, including sales tax. Assuming an 8.4% tax rate, the gross amount subject to tax is $4.61 (5/1.084).

Example: A coffee bar sells a double, tall, latte for $3.00 including sales tax. Assuming a tax rate of 8.4%, the taxable amount is $2.77 (3/1.084).

Note: *If sales tax is not separately stated or properly indicated as included, it is presumed that retail sales tax was not collected. In which case, retail sales tax applies to the gross receipts of the business.*

What about vending machine sales?

It is not necessary to separately state the amount of sales tax or to post "tax included" when making sales through a vending machine. See *Vending Machines.*

References: WAC 458-20-107; WAC 458-20-124; WAC 458-20-187

Pizza: Prepared and Delivered or Take-and-Bake

Do I collect sales tax on "take and bake" pizzas?

Retail sales tax applies to pizza when sold by a retail vendor that is required to have a food handler's permit. The tax applies whether the pizza is prepared, baked and delivered or simply prepared and sold unbaked.

Sales of prepared pizza in King County are also subject to the King County food and beverage tax.

Retail sales tax does not apply to sales of prepackaged pizza when sold by a person who is not required to have a food handler's permit. **Example**: A grocery store that sells prepackaged pizza (pizza that is not prepared and/or packaged on the grocer's premises) is selling an exempt food product.

What if I deliver pizza to a customer outside the state?

If you deliver pizza to the customer at a location outside the state, Washington's tax does not apply. Sellers may take an "interstate sale" deduction under both retail sales tax and retailing B&O tax.

References: RCW 69.06.010 – Food and beverage service workers permit
WAC 458-20-124; WAC 458-20-12401 and WAC 458-20-193

Unclaimed Property

What is "unclaimed property?"

Unclaimed property is money or intangible property held for a period of time with no owner contact. The Washington Unclaimed Property Act protects unclaimed property until it is returned to its rightful owner or their heir. The Department of Revenue acts, as custodian for safe keeping of the property until the rightful owner can be located. When reported to the Department, abandoned property is available for refund to the owner or legal claimant indefinitely.

Washington State law requires businesses and other organizations to review their records each year to determine whether they hold any property that has been unclaimed for a set period of time. Businesses must file an annual report and deliver the property to the state.

What type of unclaimed property does a restaurant have?

The most common types of unclaimed property held by restaurants include:

- Unclaimed wages (e.g. wage or payroll checks);
- Unredeemed gift certificates or gift cards;
- Customer credits.

Note: *Unredeemed gift certificates must be reported even if the customer's name or address is not available. Restaurants may not charge a service fee on the gift certificate. The value paid by the purchaser is the amount that must be reported.*

When is property considered abandoned?

Most property is presumed abandoned after **three** years with the exception of unclaimed wages or payroll checks that are presumed abandoned after **one** year.

When should I report unclaimed property?

A business that has unclaimed property must report by November 1 each year. Unclaimed property forms are available via the Department's web site, via e-mail to UPC@dor.wa.gov, or by calling (360) 586-2736.

Reference: 63.29.RCW

Vending Machines

Does sales tax apply to sales of merchandise through a vending machine?

Retail sales tax applies to sales of **merchandise** through a vending machine. Gross receipts are subject to retailing B&O tax. Merchandise includes items such as cigarettes, toiletries and toys. **If the restaurant owns the machine, the restaurant must report and pay the tax.**

The restaurant may deduct the sales tax from the total amount received in the machines to arrive at the taxable amount.

Example: The total amount received in the machine is $200. The tax rate is 8.4%. The gross taxable amount subject to *retail sales tax* and *retailing* B&O tax is $184.50 ($200/1.084 = $184.50).

What about hot foods?

Sales of **hot foods** such as coffee, chocolate, tea, soups, etc. are subject to sales tax. The amount of sales tax may be backed out of the total amount received to arrive at the gross taxable amount.

Example: The gross receipts in the machine are $200. The tax rate is 8.4%. The gross taxable amount subject to *retail sales tax* and *retailing* B&O tax is $184.50 ($200/1.084 = $184.50).

Candy or pop?

Retail sales tax applies to sales of candy and pop through a vending machine. The tax applies based on a formula of **fifty-seven percent of the gross receipts from the machine less the amount of sales tax included.**

Example: Gross receipts from the vending machine equal $100. Tax rate is 8.4%. Total taxable amount subject to *retail sales tax* and *retailing* B&O tax is $52.58 ($100x 57% = $57/1.084 = $52.58).

References: WAC 458-20-187 and WAC 458-20-244

Leasehold Excise Tax

What is leasehold excise tax and when does it apply?

The leasehold excise tax applies in lieu of county property tax when persons or businesses lease or occupy publicly owned real or personal property.

Public property is property owned by the federal government, state of Washington, counties, school districts and other municipal corporations.

The amount subject to tax is generally the amount of rent. Although certain expenses and improvements may also be included in the taxable amount.

Generally, the tax is collected by the public entity that leases the property. However, the federal government does not collect the tax. Therefore, persons leasing federal property must report and pay the tax directly to the Department of Revenue.

Reference: *For more information regarding leasehold excise tax, contact the Special Programs section of DOR at (360) 586-5190.*

Litter Tax

Does litter tax apply?

The litter tax applies to sales of certain products that contribute to litter problems.

Restaurants are subject to litter tax on sales of food products when sold to "to go." The tax does not apply to food and beverages sold solely for consumption indoors on the seller's premises.

Taxable products sold by restaurants include:

- Meals
- Beverages
- Newspapers
- Cigarettes/tobacco products

The litter tax rate is .00015 (.015%).

References: WAC 458-20-243 and ETA 445.04.243.

Personal Property Tax

What is personal property tax?

Most people are aware that property tax applies to real property. Personal property is also subject to property tax when used in a business activity. Personal property includes machinery, equipment, furniture and supplies. The tax rate for real and personal property is the same.

How do I report and pay personal property tax?

Every person who uses personal property in a business or has taxable personal property must complete a personal property affidavit by April 30 each year.

The affidavit must list the taxable personal property located in the county as of 12:00 noon on January 1. The list must include the acquisition cost and year acquired. The assessor uses the affidavit to value personal property for taxes due the following year.

County assessors and treasurers levy and collect the property tax. The county assessor mails personal property affidavits in January of each year to persons who have previously listed personal property. If you do not receive an affidavit or have questions regarding real and/or personal property taxes please contact your local county treasurer's office. The number is listed in the county government section of the telephone directory.

Syrup Tax

What is syrup tax and when does it apply?

Syrup tax is an excise tax on wholesale sales of concentrated syrups that are used with carbonated water to produce a carbonated beverage.

Wholesalers generally collect the tax from retailers. However, if the wholesaler does not collect the tax, the retailer must report and pay the tax directly to the Department. This generally occurs in situations where the syrup is purchased from an out of state wholesaler who is not registered in Washington.

The tax must be reported on the designated "syrup" line of the combined excise tax return.

Reference: WAC 458-20-255

Record Keeping Requirements

What records must I keep and for how long?

Good record keeping is an important element of running a successful business. The law requires businesses to keep complete and adequate records for a period of at least five years. In general, records should be kept that demonstrate:

- The amount of gross receipts and sales from all sources, including barter or exchange transactions.

- Supporting documentation for all deductions, exemptions, or credits claimed

Other important records to keep include:

- Federal income tax returns
- Washington combined excise tax returns
- General and subsidiary ledgers
- Sales and/or cash receipts journals
- Sales invoices
- Purchase/cash disbursement journals
- Purchase invoices for assets and expense items
- Financial statements
- Resale certificate for wholesale sales
- Documentation of any exemptions and deductions
- Records of “to go” sales

Reference: WAC 458-20-254

Preparing for an Audit

How are accounts selected for audit?

Audits are a routine procedure used to determine whether state excise taxes are being reported and paid correctly. The majority of businesses audited by the Department of Revenue (DOR) are chosen using statistical methods.

What happens during an audit?

The auditor reviews the business records to verify that taxes were properly reported. A review includes:

- Income reconciliation (amount and classification)
- Confirmation of any deductions or exemptions claimed
- Confirm sales or use tax paid on purchases (assets & consumables)

Note: *An audit period generally covers four years plus the current reporting period*

What happens after the audit?

The auditor will discuss the results of the audit. If you agree with the results, the auditor then prepares the final audit report. A field audit manager reviews the audit before submitting it to the Audit Division's audit review. This can take six to eight weeks.

If the audit results in additional taxes owed, you have 30 days from the date the audit is mailed to pay the tax and interest in full.

If you have overpaid your taxes, you will receive a credit notice to apply against amounts due on future returns unless you request a refund.

You are encouraged to schedule a conference with the Field Audit manager if you disagree with the audit adjustments. If you are unable to reach an agreement, you will be informed of how file a formal appeal. **You have 30 days from the date the audit report is mailed to file an appeal.**

Other Agencies to Contact	
Agency:	**For information about:**
Internal Revenue Service Information (800) 829-1040 Forms (800) 829-3676 http://www.irs.ustreas.gov	Federal Employee Withholding Social Security Medicare
Department of Licensing PO Box 48001 Olympia, WA 98504-8001 (360) 664-1400 http://www.wa.gov/dol	Master License License to dispense cigarettes Trade Name Registration
Department of Revenue PO Box 47478 Olympia, Washington 98504 1-800-647-7706 http://www.dor.wa.gov	Retail sales tax Completing the Combined Excise Tax Return B&O tax (state imposed)
Liquor Control Board Licensing and Regulation PO Box 43098 Olympia WA 98504-3098 Phone: (360) 664-1600 http://www.liq.wa.gov	Permit to sell alcoholic beverages
Employment Security Department PO Box 9046 Olympia, WA 98507-9046 (360) 902-9360 http://www.wa.gov/esd	Unemployment Insurance for Employees
Department of Labor and Industries PO Box 44140 Olympia, WA 98504-4140 (360) 902-4817 http://www.wa.gov/lni	Industrial Insurance for Employees
(local county) **Department of Health** Varies by County http://www.doh.wa.gov/LHJMap/LHJMap.htm.	Food and Beverage Worker Service Permits
Gambling Commission Administration/Licensing (800)345-2529 or (360)486-3440 http://www.wsgc.wa.gov/	Gambling License

Department Services	
Internet Access	Department of Revenue home page: http://www.wa.gov/DOR/wador.htm
Published Determinations	Use **Taxpedia** to search published determinations by key word. Available at **http://taxpedia.dor.wa.gov/**
Listserv	Join **Listserv,** the Department's new e-mail distribution service. Sign up to receive tax information and updates electronically. Topics include: • Electronic filing • Excise taxes • Sales tax rates • Property tax newsletter • Unclaimed property Sign up at http://www.dor.wa.gov/Content/Contact/email/con_email_listserv_app.asp?listtype=excise.
Speaker's Bureau	Request a speaker for your organization. Contact the Speaker's Bureau coordinator, Bridgit Feeser, at (360) 486-2111
Taxpayer Rights Advocate	The Taxpayer Rights Advocate can provide assistance to help you understand your rights and in working with the Department of Revenue. Contact the Taxpayer Rights Advocate at 1-800-647-7706 or (360) 486-2340

Tax Exercise

The Marina Cove Bar & Grill located in Seattle, WA sells meals and beverages and also sells whole pies that are baked on the premises. The restaurant charges a mandatory gratuity to parties of five or more and charges separately for the use of the banquet room.

The restaurant receives commissions for allowing the placement of a cigarette vending machine on the premises. Gift certificates sales were $100.

On Friday and Saturday nights the restaurant's lounge has a live band and a dance floor and collects a cover charge at the door. Sales tax is included in the price of all drinks sold in the lounge. Sales tax included is properly posted. The restaurant separately accounts for taxable and nontaxable sales.

The restaurant's sales are as follows:

1. Meals and beverages	$10,000
2. Mandatory gratuities	$ 500
3. Commissions from vending machine	$ 200
4. Cover charges	$ 2,000
5. Drinks sold in the lounge	$ 4,000
6. Banquet room charge	$ 500
7. Whole pies (baked on the premises)	$ 200
8. Gift Certificates	$ 100

Comment:

(4) The $2,000 cover charges include sales tax. The taxable amount is $1,838 (2,000/1.088).
(5) The $4,000 drinks sold in lounge include sales tax. The taxable amount is $3,660 (4,000/1.093).

Tax Exercise (Answer)

Category	Amount	Classification
1. Meals and beverages	$10,000	Retail
2. Mandatory gratuities	$500	Retail
3. Commissions from vending machine	$200	Service
4. Cover charges	$2,000	Retail
5. Drinks sold in the lounge	$4,000	Retail
6. Banquet room charge	$500	Service
7. Whole pies (baked on the premises)	$200	Retail/litter
8. Gift Certificates	$100	N/A

Revenues should be reported as follows:

Service & other activities B&O tax	$700 (3+6)
Retailing B&O tax	$16,198 (1+2+4+5+7)
Retail sales tax	$15,998 (1+2+4+5)
Litter tax	$ 200 (7)
King County Food and beverage Tax	$14,160 (1+2+5)
RTA	$15,998 (1+2+4+5)

Comment:

(4) Cover charges include sales tax. The taxable amount is $1,838 (2,000/1.088).
(5) Drinks sold in lounge include sales tax. The taxable amount is $3,660 (4,000/1.093).
(7) Pies - Litter tax applies on "to go" foods. Baked goods are not subject to sales tax. Deduction for baked goods under RST.
(8) Sales of gift certificates are not recognized as income until redeemed.

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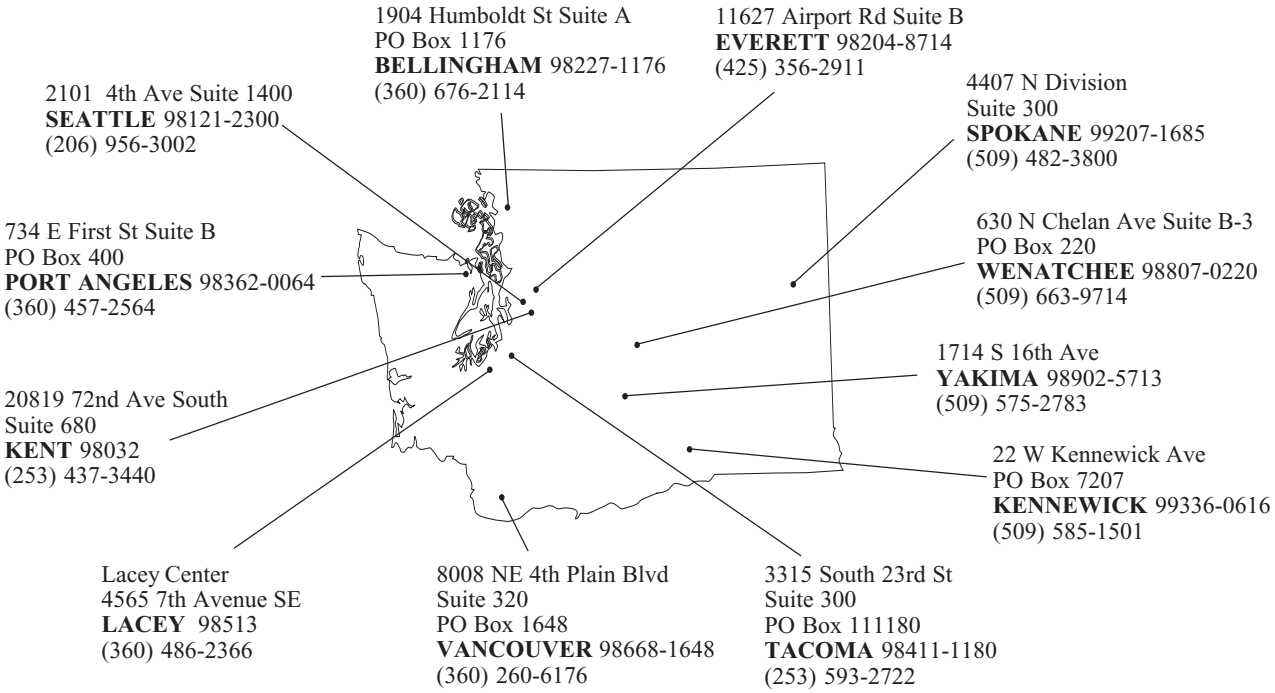
Department of Revenue Taxpayer Assistance

http://dor.wa.gov

Field Office Locations



Telephone Information Center
1-800-647-7706

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