



EXPEDITED RULE MAKING

CR-105 (June 2024) (Implements RCW 34.05.353)

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DATE: September 19, 2024

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WSR 24-20-012

Agency: Department of Revenue

Title of rule and other identifying information: (describe subject) WAC 458-20-10201 Application process and eligibility requirements for reseller permits; WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, hostels, trailer camps, short-term rentals and similar lodging businesses.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is amending WAC 458-20-10201 and WAC 458-20-166 to incorporate 2024 legislation, Senate Bill 6215 (Section 3) and House Bill 2137, respectively. Senate Bill 6215 (Section 3) amended the definition of “contractor” to include plumbing contractor activities in RCW 18.106.010. House Bill 2137 exempted certain lodging from tourism promotion area assessments if authorized by the legislative authority of a local government. In addition to the new exemption in House Bill 2137, WAC 458-20-166 was updated to removed outdated language and to improve readability.

Reasons supporting proposal: The changes to WAC 458-20-10201 clarify the contractor activities under which a reseller permit may be issued. The updates to WAC 458-20-166 clarify when lodging may be exempted from a tourism promotion area assessment and improves the readability of the rule.

Statutory authority for adoption: RCW 82.01.060; RCW 82.32.300

Statute being implemented: RCW 82.32.783; RCW 35.101.055

Is rule necessary because of a:

| | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

Name of proponent: (person or organization) Department of Revenue

Private
 Public
 Governmental

Name of agency personnel responsible for:

| | Name | Office Location | Phone |
|-----------------|----------------|-------------------------------------|--------------|
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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): The expedited rule-making process is applicable to these rule updates because the Department is incorporating changes resulting from 2024 legislation and the proposed amendments clarify these rules without changing their effect .

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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BEGINNING (date/time) September 20, 2024 (12:00 am) **AND RECEIVED BY** (date/time) December 2, 2024 (11:59 pm)

Date: September 19, 2024

Name: Brenton Madison

Title: Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 23-14-002, filed 6/21/23, effective 7/22/23)

WAC 458-20-10201 Application process and eligibility requirements for reseller permits. (1) **Introduction.** Reseller permits, issued by the department of revenue (department), replaced resale certificates as the documentation necessary to substantiate the wholesale nature of a sales transaction effective January 1, 2010. This rule explains the criteria under which the department will automatically issue a reseller permit, the application process for both contractors and taxpayers engaging in other business activities when the department does not automatically issue or renew a reseller permit, and the criteria that may result in the denial of an application for a reseller permit. Unique requirements and provisions apply to contractors. (See Part III of this rule.)

The information in this rule is organized into ~~((the following))~~ three parts:

- (a) Part I: General Information.
- (b) Part II: Businesses Other than Contractors.
- (c) Part III: Contractors.

(2) **Other rules that may apply.** Readers may want to refer to other rules for additional information, including those in the following list:

(a) WAC 458-20-102 ~~((+))~~Reseller permits~~((+))~~, which explains taxpayers' responsibilities regarding the use of reseller permits, sellers' responsibilities for retaining copies of reseller permits, and the implications for taxpayers not properly using reseller permits and sellers not obtaining copies of reseller permits from taxpayers;

(b) WAC 458-20-10202 ~~((+))~~Brief adjudicative proceedings for matters related to reseller permits~~((+))~~, which explains the process a taxpayer must use to appeal the department's denial of an application for a reseller permit; and

(c) WAC 458-20-192 ~~((+))~~Indians-Indian country~~((+))~~, which explains the extent of the state's authority to regulate and impose tax in Indian country.

(3) **Examples.** This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

Part I - General Information

(101) Definitions. For the purpose of this rule, the following terms ~~((will))~~ apply:

(a) **Consumer.** "Consumer" has the same meaning as under RCW 82.04.190.

(b) **Contractor.** As provided in RCW 82.32.783 (8)(a), a "contractor" is a person whose primary business ((activity is as a contractor as defined under RCW 18.27.010 or an electrical contractor as defined under RCW)) activities are those of a contractor. Business activities of a contractor include those identified in RCW 18.27.010, 18.106.010, or 19.28.006.

(c) **Gross income.** "Gross income" means gross proceeds of sales as defined in RCW 82.04.070 and value of products manufactured as determined under RCW 82.04.450.

(d) **Labor.** "Labor" is defined as the work of subcontractors, ~~((+))~~including personnel provided by temporary staffing compa-

nies(+) , hired by a contractor to perform a portion of the construction services in respect to real property owned by a third party. In the case of speculative builders, labor includes the work of any contractor hired by the speculative builder. Labor does not include the work of taxpayer's employees. Nor does the term include architects, consultants, engineers, construction managers, or other independent contractors hired to oversee a project but who are not responsible for the construction of the project. However, for purposes of the percentage discussed in subsection (303)(a)(iii) of this rule, purchases of labor may include the wages of taxpayer's employees and amounts paid to consultants, engineers, construction managers or other independent contractors hired to oversee a project if all such purchases are commingled in the applicant's records and it would be impractical to exclude such purchases.

(e) **Materials.** "Materials" is defined as tangible personal property that becomes incorporated into the real property being constructed, repaired, decorated, or improved. Materials are the type of tangible personal property that contractors on retail construction projects purchase at wholesale, such as lumber, concrete, paint, wiring, pipe, roofing materials, insulation, nails, screws, drywall, and flooring material. Materials do not include consumable supplies, tools, or equipment, whether purchased or rented, such as bulldozers. However, for purposes of the percentage discussed in subsection (303)(a)(iii) of this rule, purchases of consumable supplies, tools, and equipment rentals may be included with material purchases if all such purchases are commingled in the applicant's records and it would be impractical to exclude such purchases.

(f) **Material misstatement.** "Material misstatement" is a false statement knowingly or purposefully made by the applicant with the intent to deceive or mislead the department.

(g) **Outstanding tax liability.** ~~((For the purpose of this rule,))~~ "Outstanding tax liability" is any issued tax invoice that has not been paid in full on or before its stated due date. The definition excludes an invoice placed on hold by the department or where the department has executed a payment agreement with the taxpayer and the taxpayer is still in compliance with that agreement.

(h) **Reseller permit.** A "reseller permit" is the document issued to a taxpayer by the department, a copy of which the taxpayer provides to a seller to substantiate a wholesale purchase. A wholesale purchase is not subject to retail sales tax. RCW 82.04.060; 82.08.020.

(i) **Retail construction activity.** "Retail construction activity" means the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, on, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and it also includes the sale of services or charges made for the clearing of land and the moving of earth except the mere leveling of land used in commercial farming or agriculture. Retail construction activity generally involves residential and commercial construction performed for others, including road construction for the state of Washington. It generally includes construction activities that are not specifically designated as speculative building, government contracting, public road construction, logging road construction, radioactive waste cleanup on federal lands, or designated hazardous site clean up jobs. RCW 82.04.050.

(j) **Wholesale construction activity.** "Wholesale construction activity" means labor and services rendered for persons who are not consumers in respect to real property, if such labor and services are expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers.

(102) Can any business obtain a reseller permit? No. The legislature passed the act authorizing reseller permits to address the significant retail sales tax noncompliance problem resulting from both the intentional and unintentional misuse of resale certificates. The department will not issue a reseller permit unless the business substantiates that it is entitled to make wholesale purchases. Some businesses may not receive a reseller permit, and if they make wholesale purchases, they will need to pay retail sales tax to the seller and then claim a "taxable amount for tax paid at source" deduction on their excise tax return or request a refund from the department as discussed in subsection (205) of this rule.

Example 1. BC Interior Design (BC) arranges for its customers to order and pay for furniture, window treatments and other decorative items directly from vendors. As the customers purchase directly from the vendors, and BC does not purchase the items for resale to their customers, BC may not qualify for a reseller permit. BC must meet the criteria as discussed in subsection (203) of this rule, which includes reporting income from retailing, wholesaling, or manufacturing activities.

Part II - Businesses Other than Contractors

(201) How does a business obtain a reseller permit? The department may automatically issue a reseller permit to a business if it appears to the department's satisfaction, based on the nature of the business's activities and any other information available to the department, that the business is entitled to make purchases at wholesale.

Those businesses that do not receive an automatically issued reseller permit may apply to the department to obtain a reseller permit. Applications can be filed using the businesses' (~~"My Account."~~) "My DOR" online account. If a paper application is needed, businesses can obtain one by calling 360-705-6705 (~~((taxpayer services) or 360-902-7137 (taxpayer account administration))~~) (tax assistance). Completed paper applications should be mailed or faxed to the department at:

Taxpayer Account Administration
Washington State Department of Revenue
P.O. Box 47476
Olympia, WA 98504-7476
Fax: 360-705-6733

(202) When does a business apply for a reseller permit? A business may apply for a reseller permit at any time.

(203) What criteria will the department consider when deciding whether a business will receive a reseller permit?

(a) Except as provided in (b) of this subsection, a business other than a contractor will receive a reseller permit if it satisfies the following criteria (contractors should refer to subsection (303) of this rule for an explanation of the requirements unique to them):

(i) The business has an active tax reporting account with the department;

(ii) The business has reported gross income on its excise tax returns covering a monthly or quarterly period during the immediately preceding six months or, if the business reports on an annual basis, on the immediately preceding annual excise tax return; and

(iii) Five percent or more of the business's gross income reported during the applicable six- or 12-month period described in (a)(ii) of this subsection was reported under a retailing, wholesaling, or manufacturing business and occupation (B&O) tax classification.

(b) Notwithstanding (a) of this subsection, the department may deny an application for a reseller permit if:

(i) The department determines that an applicant is not entitled to make purchases at wholesale or is otherwise prohibited from using a reseller permit based on the nature of the applicant's business;

(ii) The applicant has been assessed the penalty for the misuse of a resale certificate or a reseller permit;

(iii) The application contains any material misstatement;

(iv) The application is incomplete;

(v) The applicant has an outstanding tax liability due to the department; or

(vi) The department determines that denial of the application is in the best interest of collecting the taxes due under Title 82 RCW.

(c) The department's decision to approve or deny an application may be based on excise tax returns previously filed with the department by the applicant, a current or previous examination of the applicant's books and records by the department, information provided by the applicant in the master application and the reseller permit application, and other information available to the department.

(d) In the event that a business has reorganized, the new business resulting from the reorganization may be denied a reseller permit if the former business would not have qualified for a reseller permit under (a) or (b) of this subsection. For purposes of this subsection, "reorganize" means:

(i) The transfer, however effected, of a majority of the assets of one business to another business where any of the persons having an interest in the ownership or management in the former business maintain an ownership or management interest in the new business, either directly or indirectly;

(ii) A mere change in identity or form of ownership, however effected; or

(iii) The new business is a mere continuation of the former business based on significant shared features such as owners, personnel, assets, or general business activity.

(204) What if I am a new business and don't have a past reporting history? New businesses will generally be issued permits if they indicate they will engage in activity taxable under a retailing, wholesaling, or manufacturing B&O tax classification.

(205) What if I don't get a reseller permit and some of my purchases qualify as wholesale purchases? Some taxpayers that do not qualify for a reseller permit make occasional wholesale purchases. In these circumstances, the taxpayer must pay retail sales tax on these purchases and then claim a "taxable amount for tax paid at source" deduction on its excise tax return. However, such a deduction in respect to the purchase of services is not permitted if the services are not of a type that can be sold at wholesale under the definition of wholesale sale in RCW 82.04.060.

Alternatively, the taxpayer may request a refund from the department of retail sales tax it paid on purchases that are later resold

without being used (intervening use) by the taxpayer or for purchases that would otherwise have met the definition of wholesale sale if the taxpayer had provided the seller with a reseller permit or uniform exemption certificate as authorized in RCW 82.04.470. For instructions on requesting a refund see WAC 458-20-229.

Part III - Contractors

(301) How does a contractor obtain a reseller permit? The department may automatically issue a reseller permit to a contractor if the department is satisfied that the contractor is entitled to make purchases at wholesale and that issuing the reseller permit is unlikely to jeopardize collection of sales taxes due based on the criteria discussed in subsection (303) of this rule.

Contractors that do not receive an automatically issued reseller permit may apply to the department to obtain a reseller permit in the same manner as provided in subsection (201) of this rule. However, the application identifies information specific to contractors that must be provided.

(302) When does a contractor apply for a reseller permit? The same guidelines for business applicants as provided in subsection (202) of this rule also apply to contractor applicants.

(303) What are the criteria specific to contractors to receive a reseller permit?

- (a) The department may issue a permit to a contractor that:
 - (i) Provides a completed application with no material misstatement as that term is defined in this rule;
 - (ii) Demonstrates it is entitled to make purchases at wholesale; and
 - (iii) Reported on its application at least 25 percent of its total dollar amount of material and labor purchases in the preceding 24 months were for retail and wholesale construction activities performed by the contractor.

The department may approve an application not meeting these criteria if the department is satisfied that approval is unlikely to jeopardize collection of the taxes due under Title 82 RCW.

(b) If the criteria in (a) of this subsection are satisfied, the department will then consider the following factors to determine whether to issue a reseller permit to a contractor:

- (i) Whether the contractor has an active tax reporting account with the department;
- (ii) Whether the contractor has reported gross income on its excise tax returns covering a monthly or quarterly period during the immediately preceding six months or, if the contractor reports on an annual basis, on the immediately preceding annual excise tax return;
- (iii) Whether the contractor has the appropriate certification and licensing with the Washington state department of labor and industries;
- (iv) Whether the contractor has been assessed the penalty for the misuse of a resale certificate or a reseller permit;
- (v) Whether the contractor has an outstanding tax liability due to the department; and
- (vi) Any other factor resulting in a determination by the department that denial of the contractor's application is in the best interest of collecting the taxes due under Title 82 RCW.

(c) The department's decision to approve or deny an application may be based on the same materials and information as discussed in subsection (203)(c) of this rule.

(d) The provisions of subsection (203)(d) of this rule apply equally to contractors.

Example 2. DC Contracting is a speculative homebuilder and also purchases houses to renovate and sell, sometimes referred to as flipping. A speculative builder is the consumer of all materials incorporated into the real estate including houses purchased for flipping. Retail sales tax is owed on all supplies and services DC Contracting purchases, unless there is an applicable exemption. DC Contracting would not qualify for a reseller permit under these facts.

(304) What if a contractor does not obtain a reseller permit and some of its purchases do qualify as wholesale purchases? The provisions of subsection (205) of this rule apply equally to contractors.

AMENDATORY SECTION (Amending WSR 19-04-002, filed 1/23/19, effective 2/23/19)

WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, hostels, trailer camps, short-term rentals and similar lodging businesses. (1) **Introduction.** This rule explains the taxation of persons operating hotels, motels, bed and breakfast facilities, and similar businesses that provide lodging and related services to transient tenants.

(a) **References to related rules.** The department of revenue (department) has adopted other rules that may contain additional relevant information:

- (i) WAC 458-20-111 ~~((+))~~Advances and reimbursements~~((+))~~;
- (ii) WAC 458-20-118 ~~((+))~~Sale or rental of real estate, license to use real estate~~((+))~~;
- (iii) WAC 458-20-159 ~~((+))~~Consignees, bailees, factors, agents and auctioneers~~((+))~~;
- (iv) WAC 458-20-165 ~~((+))~~Laundry, dry cleaning, linen and uniform supply, and self-service and coin-operated laundry services~~((+))~~;
- (v) WAC 458-20-167 ~~((+))~~Educational institutions, school districts, student organizations, and private schools~~((+))~~;
- (vi) WAC 458-20-168 ~~((+))~~Hospitals, nursing homes, assisted living facilities, adult family homes, and similar health care facilities~~((+))~~;
- (vii) WAC 458-20-187 ~~((+Coin-operated vending machines, amusement devices and service machines))~~ Tax responsibility of vending machine owners and operators; and
- (viii) WAC 458-20-245 ~~((+))~~Taxation of competitive telephone service, telecommunications service, and ancillary service~~((+))~~.

(b) **Examples.** This rule includes examples that identify a set of facts and then state a conclusion. The examples are only a general guide. The department will evaluate each case on its particular facts and circumstances ~~((and apply both this rule and other statutory and common law authority))~~.

(2) This rule explains the business and occupation (B&O) tax, retail sales tax, special hotel/motel tax, the convention and trade center tax, the tourism promotion area charge, and the taxation of emergency housing furnished to homeless people.

(a) This rule applies to persons operating hotels, motels, short-term rentals, and the following businesses:

(i) Trailer camps and recreational vehicle parks that rent space to transient tenants for house trailers, campers, recreational vehicles, mobile homes, tents, and similar accommodations.

(ii) Educational institutions that sell overnight lodging to persons other than students. Information regarding educational institutions is provided in WAC 458-20-167 (~~((Educational institutions, school districts, student organizations, and private schools))~~).

(iii) Private lodging houses, dormitories, bunkhouses, and similar accommodations operated by or on behalf of a business or school solely for the accommodation of employees of the business or students of the school, which are not held out to the public as a place where sleeping accommodations may be obtained.

(b) This rule does not apply to persons operating the following businesses:

(i) Hospitals, sanitariums, nursing homes, rest homes, and similar institutions. Information regarding operating these establishments is provided in WAC 458-20-168 (~~((Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities))~~).

(ii) Apartments or condominiums where the rental is for one month or more. Information regarding rentals for one month or more and the distinction between a rental of real estate and the license to use real estate is provided in WAC 458-20-118 (~~((Sale or rental of real estate, license to use real estate))~~).

(3) **Transient tenant defined.** The term "transient tenant" as used in this rule 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))~~ 30 continuous days if the rental period does not begin on the first day of the month. Providing lodging for a continuous period of one month or more to a guest, resident, or other occupant is a rental or lease of real property. It is presumed that when lodging is provided for a continuous period of one month or more, or ~~((thirty))~~ 30 continuous days or more if the rental period does not begin on the first day of the month, the guest, resident, or other occupant purchasing the lodging is a nontransient upon the ~~((thirtieth))~~ 30th day without regard to a specific lodging unit occupied throughout the continuous ~~((thirty))~~ 30-day period. An occupant who contracts in advance and remains in continuous occupancy for the initial ~~((thirty))~~ 30 days will be considered a nontransient from the first day of occupancy provided in the contract.

(4) **Business and occupation tax (B&O).** Where lodging is sold to a nontransient tenant, the transaction is a rental of real estate and not subject to B&O tax. ~~((See))~~ WAC 458-20-118 (~~((Sale or rental of real estate, license to use real estate))~~). Sales of lodging and related services to transient tenants are subject to B&O tax, including transactions that may have been identified or characterized as membership fees or dues.

(a) **Retailing classification.** Gross income derived from the following activities provided to transient tenants is subject to the retailing B&O tax:

~~((+))~~ (i) Rental of rooms for lodging;

~~((+))~~ (ii) Rental of radio and television sets;

~~((+))~~ (iii) Rental of rooms, space, and facilities not for lodging, such as ballrooms, display rooms, meeting rooms, and similar accommodations;

~~((+))~~ (iv) Automobile parking or storage; and

~~((+))~~ (v) Sale or rental of tangible personal property at retail. More information regarding retail sales is provided in subsection (5) of this rule discussing retail sales tax.

(b) **Service and other activities classification.** Commissions, amounts derived from accommodations not available to the public, and certain ~~((lump-sum))~~ fees charged for multiple services are taxable under the service and other activities classification of the B&O tax. ~~((Gross income derived from the following business activities also is subject to service and other B&O tax.))~~

(i) Commission income. Commission income received by hotels, motels, and similar businesses from other businesses providing a service to their tenants ~~((The following are examples of commission income that is subject to the service and other activities B&O tax.))~~ is subject to the service and other activities B&O tax, such as commission income received from:

~~((A))~~ ~~((Commission income received from))~~ Acting as a laundry agent for tenants when someone other than the hotel provides the laundry service. Information regarding these commissions is provided in WAC 458-20-165 ~~((Laundry, dry cleaning, linen and uniform supply, and self-service and coin-operated laundry services.))~~ ;

~~((B))~~ ~~((Commission income received from telephone companies for long distance telephone calls when the hotel or motel merely acts as an agent and commission income received from coin-operated telephones. Information regarding these commissions is provided in WAC 458-20-159 (Consignees, bailees, factors, agents and auctioneers) and WAC 458-20-245 (Taxation of competitive telephone service, telecommunications service, and ancillary service). Refer to subsection (5) of this rule for a discussion of telephone service fees subject to retail sales tax.~~

~~((C))~~ ~~((Commission income or license fees for))~~ Permitting a satellite antenna to be installed on the premises or for permitting a broadcaster or cable operator to make sales to the transient tenants staying at the hotel or motel ~~((are subject to service and other activities B&O tax.))~~ ;

~~((D))~~ ~~((Commission income from))~~ (C) The rental of videos for use by tenants staying at the hotel or motel when the hotel or motel operator is making the sales as an agent for a seller ~~((-))~~ ; and

~~((E))~~ ~~((Commission income received from))~~ (D) The operation of ~~((amusement devices))~~ a vending machine not owned by the owner or operator of the lodging facility. Information regarding ~~((amusement devices))~~ vending machines is provided in WAC 458-20-187 ~~((Coin-operated vending machines, amusement devices and service machines.))~~

(ii) Other income. Gross income derived from the following business activities is subject to the service and other activities B&O tax ~~((-))~~ :

(A) The rental of sleeping accommodations by private lodging houses , ~~((+))~~ including dormitories, bunkhouses, and similar accommodations ~~((+))~~ operated by or on behalf of a business for its employees, which are not held out to the public as a place where sleeping accommodations may be obtained ~~((-))~~ ; and

(B) Deposits retained by ~~((the))~~ a lodging business as a penalty charged to a transient tenant for failure to timely cancel a reservation.

(5) **Retail sales tax.** Persons providing lodging and other services generally must collect and remit retail sales tax on the gross selling price of the lodging and other services. They must pay retail

sales or use tax on all items they purchase for use in providing their services.

(a) **Lodging.** All fees charged for lodging and related services to transient tenants are retail sales. Included are fees charged for vehicle parking and storage and for space and other facilities, including fees charged by a trailer camp for utility services.

(i) A tenant who does not contract in advance to stay at least (~~thirty~~) 30 days is not entitled to a refund of retail sales tax if the rental period later extends beyond (~~thirty~~) 30 days.

Example: (~~Assume~~) A tenant rents the same motel room on a weekly basis (~~. Further assume the tenant~~) and continues to extend occupancy on a weekly basis until the tenant finally exceeds (~~thirty~~) 30 days. Under these (~~assumed~~) facts, the tenant is considered a transient for the first (~~twenty-nine~~) 29 days of occupancy and must pay retail sales tax on the rental fees. The rental fees are exempt from retail sales tax beginning on the (~~thirtieth~~) 30th day. The tenant is not entitled to a refund of retail sales taxes paid on the rental fees for the first (~~twenty-nine~~) 29 days.

(ii) A business providing transient-tenant 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 gross income received from transient-tenant lodging subject to retail sales tax for each facility located within a participating city or county.

(b) **Meals and entertainment.** All fees charged for food, beverages, and entertainment activities are retail sales subject to retail sales tax.

(i) Fees charged for related services (~~including, but not limited to,~~) such as room service, banquet room services, (~~and~~) service charges, and gratuities that are agreed to in advance by customers or added to their bills by the service provider are subject to retail sales tax.

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

(iii) (~~Meals sold to employees are subject to retail sales tax. Information regarding meals furnished to employees is provided in WAC 458-20-119 (Sales by caterers and food service contractors).)~~ Meals provided by a restaurant to its employees without charge are exempt from retailing B&O tax and retail sales tax. RCW 82.04.750 and 82.08.9995. However, if a charge is made, retailing B&O tax and retail sales tax applies.

(iv) Sale of food and other items sold through vending machines are retail sales. Information regarding income from vending machines and the distinction between taxable and nontaxable sales of food products is provided in WAC 458-20-187 (~~(Coin-operated vending machines, amusement devices and service machines)~~) and ((WAC)) 458-20-244 (~~(Food and food ingredients)~~).

(v) When a (~~lump sum fee~~) single price is charged to nontransient tenants for providing both lodging and meals, retail sales tax must be collected (~~upon the fair selling price of such~~) on the market price of the meals. (~~Unless accounts are kept showing the fair selling price,~~) If the market price of the meals is unknown, then the tax will be computed (~~upon~~) based on 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 incidental

costs (~~(incidental thereto)~~), including an appropriate portion of overhead expenses.

~~(vi) (Cover fees charged for dancing and other entertainment activities are retail sales.~~

~~(vii)) Fees charged for providing extended television reception to transient tenants are retail sales.~~

(c) **Laundry services.** Fees charged for laundry services provided by a hotel/motel in the (~~(hotel's)~~) hotel/motel name are retail sales. Fees charged to tenants for self-service laundry facilities are not retail sales, but the gross income derived from these fees is subject to service and other activities B&O tax.

~~(d) (**Telephone charges.** Telephone and "message service" fees charged to transient tenants are retail sales, but commission income received from telephone companies for long distance telephone calls when the hotel or motel merely acts as an agent is not subject to retail sales tax.~~

~~If the hotel or motel is acting as an agent for a telephone service provider that provides long distance telephone service to the transient tenant, the actual telephone fees charged are not taxable income to the hotel or motel. These amounts are advances and reimbursements. Information on advances and reimbursements is provided in WAC 458-20-111 (Advances and reimbursements). Any additional fee added by the hotel or motel to the actual long distance telephone fee, however, is a retail sale.~~

~~(e) **Telephone lines.** If the hotel or motel leases telephone lines and then provides telephone services for a fee to either its transient or nontransient tenants, these fees are retail sales. In this case the hotel or motel is in the telephone business. Information regarding the telephone business is provided in WAC 458-20-245 (Taxation of competitive telephone service, telecommunications service, and ancillary service). The hotel or motel may give a reseller permit for purchases made 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.** Renting tangible personal property such as movies and sports equipment is a retail sale.~~

~~((g)) (e) **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 fee charged for lodging and related services is for services rendered and not for the resale of any tangible property.~~

~~(i) ((Purchases subject to retail sale tax include, but are not limited to,)) Retail sales tax applies to purchases such as beds, room furnishings, linens, towels, ((soap, shampoo)) small toiletry items (e.g., soap, shampoo, body wash, and lotion), restaurant equipment, 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) Sales of prepared meals or other prepared items are subject to retail sales tax. Information regarding the sales of food products is provided in WAC 458-20-244 ((Food and food ingredients)).~~

~~((h)) (f) **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 taxable even if the employee ultimately will be reimbursed for the lodging fee.~~

~~(i) **Payment by government voucher or check.** If the lodging fee is paid by United States government voucher or United States government~~

check payable directly to the hotel or motel, the sale is presumed to be a tax-exempt sale made directly to the federal government.

(ii) **Charges to government credit card.** (~~Various~~) United States government contracted credit cards are used to make payment for purchases of goods and services by or for the United States government. (~~Specific~~) Information about (determining when a purchase by) the taxability of government credit card (is a tax-exempt purchase by the United States government) purchases is available (via) on the department's (internet) website at (<http://dor.wa.gov>. (See the department's lodging industry guide.) For specific information about determining when payment is the direct responsibility of the United States government or the employee, you may) dor.wa.gov, or by calling the department's telephone information center at 360-705-6705. You may also contact the department's taxpayer services division at (<http://dor.wa.gov/content/ContactUs> or)):

Department of Revenue
Taxpayer Services Division
P.O. Box 47478
Olympia, WA 98504-7478

(6) **Special hotel/motel tax.** Some locations in the state impose special hotel/motel taxes. (~~These taxes are imposed under chapters 67.28 and 36.100 RCW.~~) RCW 67.28.180 and 36.100.040(1). If a business is in one of those locations, an additional tax is charged and reported under the special hotel/motel portion of the tax return. The four digit location code, the gross-selling price for providing the lodging, and the tax rate must be completed for each location where the lodging is provided. The special hotel/motel tax under RCW 67.28.180 applies without regard to the number of lodging units (except that), but the tax imposed under RCW 36.100.040(1) applies only if there are (forty) 40 or more lodging units. The (tax only applies) taxes apply to the fee charged for the rooms used for lodging by transient tenants (Additional), including fees charged for use of camping and recreational vehicle sites. The taxes do not apply to any fees charged for telephone services, laundry, (or other) incidental charges (are not subject to the special hotel/motel tax. Nor is the fee), or fees charged for use of meeting rooms, banquet rooms, or other special use rooms (subject to this tax. The tax applies, however, to fees charged for use of camping and recreational vehicle sites).

(7) **Convention and trade center tax.** (~~Subject to the exemptions in (b) of this subsection,~~) RCW 36.100.040(4) authorizes a convention and trade center tax for businesses located in King County selling lodging to transient tenants, including (, but not limited to, any short-term rental,) short-term rentals. These businesses must charge their customers the convention and trade center tax and report the tax under the "convention and trade center" portion of the combined excise tax return.

(a) Applicability of tax. The convention and trade center tax applies only to the fees charged for the rooms, or camping or recreational vehicle sites, used to provide lodging for transient tenants. Each campsite is considered a single unit.

(~~Additional~~) The tax does not apply to fees charged for telephone services, laundry, (or other) incidental charges (are not subject to the convention and trade center tax.), or fees charged for the use of meeting rooms, banquet rooms, or other special use rooms (are also not subject to the convention and trade center tax).

(b) Exemptions. The following are exempt from the convention and trade center tax:

(i) A business in a town with a population of less than (~~three hundred~~) 300 people that has fewer than (~~sixty~~) 60 rooms that are available or being used to provide lodging to transient tenants, regardless of whether the business also rents units to nontransient tenants and the combined number of transient and nontransient lodging units is (~~sixty~~) 60 rooms or more;

(ii) Businesses classified as hostels;

(iii) Any lodging that is concurrently subject to a tax on engaging in the business of being a short-term rental operator imposed by a city in which a convention and trade center is located;

(iv) Any lodging that is operated by a university health care system exclusively for family members of patients; and

(v) Any lodging that is operated as a charity described in (c)(iii)(B) of this subsection, is otherwise exempted in this subsection, or is emergency lodging to homeless people as described in subsection (9) of this rule.

(c) Definitions. The definitions in this subsection apply to the convention and trade center tax:

(i) "Hostel" means a structure or facility where a majority of the rooms for sleeping accommodations are hostel dormitories containing a minimum of four standard beds designed for single-person occupancy within the facility. Hostel accommodations are supervised and must include at least one common area and at least one common kitchen for guest use.

(ii) "Hostel dormitory" means a single room, containing four or more standard beds designed for single-person occupancy, used exclusively as nonprivate communal sleeping quarters, generally for unrelated persons, where such persons independently acquire the right to occupy individual beds, with the operator supervising and determining which bed each person will occupy.

(iii) "Short-term rental" means a lodging use, that is not a hotel or motel, in which a short-term rental operator offers or provides a dwelling unit, or portion thereof, to a guest or guests for a fee for fewer than (~~thirty~~) 30 consecutive nights. The term "short-term rental" does not include:

(A) A dwelling unit, or portion thereof, that the same person uses for (~~thirty~~) 30 or more consecutive nights; and

(B) A dwelling unit, or portion thereof, that is operated by an organization or government entity that is registered as a charitable organization with the secretary of state, state of Washington, and/or is classified by the federal Internal Revenue Service as a public charity or a private foundation, and provides temporary housing to individuals who are being treated for trauma, injury, or disease and/or their family members.

(d) Reporting requirements. The four digit location code, gross-selling price for the lodging, and the tax rate must be completed for each location where the lodging is provided.

(8) **Tourism promotion area charge.** A legislative authority as defined in RCW 35.101.010 may impose a charge on the activity of providing lodging by a business, that has 40 or more lodging units, located in the tourism promotion area (~~(, except for)~~). The charge does not apply to temporary medical housing that is exempt under RCW 82.08.997 (~~(Exemptions Temporary medical housing)~~), or any lodging business, lodging unit, or lodging guest so designated by the legislative au-

thority. RCW 35.101.055. The charge is administered by the department and must be collected by the business providing the lodging from the transient tenant. The charge is not subject to the sales tax rate limitations of RCW 82.14.410. To determine whether your lodging business must collect and remit the charge, refer to the ~~((special notices for tourism promotion areas at http://dor.wa.gov/content/GetAFormOrPublication/PublicationBySubject/tax_sn_main.aspx or the lodging industry guide at <http://dor.wa.gov/content/doingbusiness/BusinessTypes/Industry/lodging/>))~~ department's website at dor.wa.gov.

(9) **Providing emergency lodging to homeless people.** The fee charged for providing emergency lodging to homeless people purchased via a shelter voucher program administered by cities, towns, counties, or private organizations that provide emergency food and shelter services is exempt from the retail sales tax~~((7))~~. RCW 82.08.0299. The fee is also exempt from the convention and trade center tax~~((7))~~ and the special hotel/motel tax. ~~((This))~~ The form of payment does not influence the required minimum number of transient rooms available for use as transient-lodging units ~~((under the "convention and trade center tax" or under the "special hotel/motel tax."))~~.