## RULE-MAKING ORDER
**PERMANENT RULE ONLY**

**CR-103P (December 2017)**  
(Implements RCW 34.05.360)

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**Agency:** Department of Revenue  

**Effective date of rule:**  
- **Permanent Rules:**  
  - ☒ 31 days after filing.  
  - ☐ Other (specify) ____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)  

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**  
- ☐ Yes  
- ☒ No  
  - If Yes, explain:

**Purpose:** The Department amended Rule 166 to conform to changes required by 2SHB 2015, 2018 Regular Session (Chapter 245, Laws of 2018). This legislation modifies the lodging excise tax to remove the exemption for premises with fewer than sixty lodging units and to tax certain vacation rentals, short-term home-sharing arrangements, and other compensated use or occupancy of dwellings.

**Citation of rules affected by this order:**  
- **New:**  
- **Repealed:**  
- **Amended:** WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, hostels, trailer camps, short term rentals and similar lodging businesses.  
- **Suspended:**

**Statutory authority for adoption:** RCW 82.32.300 and RCW 82.01.060(2).  

**Other authority:** The statute being implemented is RCW 36.100.040.

**PERMANENT RULE (Including Expedited Rule Making)**  
Adopted under notice filed as WSR 18-23-060 on 11/16/2018 (date).  
Describe any changes other than editing from proposed to adopted version: none

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

- **Name:**  
- **Address:**  
- **Phone:**  
- **Fax:**  
- **TTY:**  
- **Email:**  
- **Web site:**  

Other: An analysis was not prepared. This rule is not a significant legislative rule as defined by RCW 34.05.328.
Note: If any category is left blank, it will be calculated as zero.
No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

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The number of sections adopted at the request of a nongovernmental entity:

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The number of sections adopted on the agency’s own initiative:

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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

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Date Adopted: January 23, 2019

Name: Erin T. Lopez

Title: Rules Coordinator

Signature: [Signature]
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); 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((1)):

(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((2)):

(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 liv-
ing facilities, adult family homes and similar health care facil-

(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 re-
al estate is provided in WAC 458-20-118 (Sale or rental of real es-
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 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 prop-
erty. It is presumed that when lodging is provided for a continuous 
period of one month or more, or thirty 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 day without regard to a specific lodging unit occu-
pied throughout the continuous thirty-day period. An occupant who con-
tracts in advance and remains in continuous occupancy for the initial 
thirty 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 
(exempt from) 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, in-
cluding transactions that may have been identified or characterized as 
membership fees or dues.

(a) **Retailing classification.** Gross income derived from the fol-
lowing activities provided to transient tenants is subject to the re-
tailing B&O tax:

- Rental of rooms for lodging;
- Rental of radio and television sets;
- Rental of rooms, space, and facilities not for lodging, such as 
ballrooms, display rooms, meeting rooms, and similar accommoda-
tions;
- Automobile parking or storage; and
- 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 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.

(A) Commission income received from acting as a laundry agent for 
tenants when someone other than the hotel provides the laundry serv-
ice. 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, telecommunication 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 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.

(E) Commission income received from the operation of amusement devices. Information regarding amusement devices is provided in WAC 458-20-187 (Coin operated vending machines, amusement devices and service machines).

(ii) 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.

(B) Deposits retained by the 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 days is not entitled to a refund of retail sales tax if the rental period later extends beyond thirty days.

Example: Assume a tenant rents the same motel room on a weekly basis. Further assume the tenant continues to extend occupancy on a weekly basis until the tenant finally exceeds thirty days. Under these assumed facts, the tenant is considered a transient for the first twenty-nine 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 day. The tenant is not entitled to a refund of retail sales taxes paid on the rental fees for the first twenty-nine 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, 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).

(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 is charged to nontransient tenants for providing both lodging and meals, retail sales tax must be collected upon the fair selling price of such meals. Unless accounts are kept showing the fair selling price, the tax will be computed upon double the cost of the meals served. The cost includes the price paid for food and drinks served, the cost of preparing and serving meals, and all other costs incidental thereto, including an appropriate portion of overhead expenses.

(vi) Cover 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 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) **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, beds, room furnishings, linens, towels, soap, shampoo, 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) **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 government credit card is a tax-exempt purchase by the United States government is available via the department's internet web site at [http://dor.wa.gov](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 contact the department's taxpayer services division at [http://dor.wa.gov/content/ContactUs/](http://dor.wa.gov/content/ContactUs/) or:

Department of Revenue
Taxpayer Services
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.) 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 tax applies without regard to the number of lodging units except that the tax imposed under (chapter 36.100) RCW 36.100.040(1) applies only if there are forty or more lodging units. The tax only applies to the fee charged for the rooms used for lodging by transient tenants. Additional fees charged for telephone services, laundry, or other incidental charges are not subject to the special hotel/motel tax. Nor is the fee 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, businesses located in King County selling lodging to transient tenants (that have sixty or more transient-lodging units) including, but not limited to, any short-term rental, 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) (A business having more than sixty units that rents to both transient tenants and nontransient tenants, is subject to the convention and trade center tax only if the business has at least sixty rooms that are available or being used to provide lodging to transient tenants.

Example: Assume Lodging House has one hundred forty total individual-occupancy rooms available to the public and rents ninety-five of the rooms to nontransient tenants. Under these assumed facts, Lodging House is not subject to the convention and trade center tax because only forty-five rooms are available or being used for transient-lodging units.

(b)) 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 fees charged for telephone services, laundry, or other incidental charges are not subject to the convention and trade center tax. 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. (The convention and trade center tax applies, however, to fees charged for camping or recreational vehicle sites. Each camp site is considered a single unit.

(c) Exemptions. Businesses having fewer than sixty transient-lodging units or businesses classified as a hostel are exempt from the convention and trade center tax. For purposes of this exemption:

(i) A business in a town with a population of less than three hundred people that has fewer than sixty 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 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 consecutive nights. The term "short-term rental" does not include:

(A) A dwelling unit, or portion thereof, that the same person uses for thirty 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) 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 located in the tourism promotion area, except for temporary medical housing that is exempt under RCW 82.08.997 (Exemptions—Temporary medical housing). 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/.

(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, the convention and trade center tax, and the special hotel/motel tax. This form of payment does not influence the required minimum of transient rooms available for use as transient-lodging units under the "convention and trade center tax" or under the "special hotel/motel tax."