



EXPEDITED RULE MAKING

CR-105 (August 2017) (Implements RCW 34.05.353)

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FILED

DATE: November 16, 2018

TIME: 10:36 AM

WSR 18-23-060

Agency: Department of Revenue

Title of rule and other identifying information: (describe subject) WAC 458-20-166 (Rule 166), Hotels, motels, boarding houses, rooming houses, resorts, hostels, trailer camps, and similar lodging businesses.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Department proposes to amend 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.

Copies of draft rules are available for viewing and printing on our website at [Rule making agenda](#).

Reasons supporting proposal: To recognize 2018 legislation.

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

Statute being implemented: RCW 36.100.040.

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 content of the proposed rule is explicitly and specifically dictated by statute.

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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AND RECEIVED BY (date) January 21, 2019

Date: November 16, 2018

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Signature:



AMENDATORY SECTION (Amending WSR 15-22-085, filed 11/3/15, effective 12/4/15)

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((-)):

(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 liv-

ing 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 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 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 occupied throughout the continuous thirty-day period. An occupant who contracts 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, 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:

- 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 accommodations;
- 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 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 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>. (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/> 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 ((a)) special hotel/motel ((tax)) 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:))~~

(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 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."