



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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FILED

DATE: August 18, 2020

TIME: 4:58 PM

WSR 20-17-138

Agency: Department of Revenue

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 20-14-126 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) WAC 458-20-241, Radio and Television Broadcasting.

Hearing location(s):

Date:

Time:

Location: (be specific)

Comment:

September 22, 2020

10:00am

Telephone-only. Call-in number to be provided, or contact Jennifer Arnold as provided below.

Due to COVID-19 this meeting will be held telephonically only..

Date of intended adoption: September 30, 2020 (Note: This is NOT the effective date)

Submit written comments to:

Name: Jennifer Arnold

Address: PO Box 47453, Olympia, WA 98504-7453

Email: JenniferA@dor.wa.gov

Fax: 360-534-1606

Other:

By (date) September 21, 2020

Assistance for persons with disabilities:

Contact Julie King or Renee Cosare

Phone: (360)704-5733 or (360) 704-5734

Fax:

TTY: 800-833-6384

Email:

Other:

By (date) September 21, 2020

Purpose of the proposal and its anticipated effects, including any changes in existing rules: • The purpose of the proposed rule is to update WAC 458-20-241 to reflect the 2019 legislative amendments to RCW 82.04.280 made by Chapter 449, Laws of 2019 (House Bill No. 2035) and to make technical, non-substantive clarifications.

Reasons supporting proposal: The proposal is supported by 2019 legislation, which updated the method in which the standard deduction is calculated and updated the signal strength contours. The proposal is also supported by the need for technical changes to improve readability and clarity.

Statutory authority for adoption: RCW 82.32.300 and 82.01.060

Statute being implemented: RCW 82.04.280

Is rule necessary because of a:

Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: (person or organization) Department of Revenue Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Jennifer Arnold	6400 Linderson Way SW, Tumwater, WA	(360)-534-1574
Implementation:	John Ryser	6400 Linderson Way SW, Tumwater, WA	(360) 534-1605
Enforcement:	John Ryser	6400 Linderson Way SW, Tumwater, WA	(360) 534-1605

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:
Name: Jennifer Arnold
Address: 6400 Linderson Way SW, Tumwater, WA 98504
Phone: 360-534-1574
Fax: 360-534-1606
TTY:
Email: JenniferA@dor.wa.gov
Other:

No: Please explain:

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES


If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. This rulemaking does not impose any liability for taxes, reporting requirements, recordkeeping requirements, or compliance requirements not otherwise imposed by statute.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: August 18, 2020	Signature: 
Name: Atif Aziz	
Title: Rules Coordinator	

AMENDATORY SECTION (Amending WSR 15-01-126, filed 12/19/14, effective 1/19/15)

WAC 458-20-241 Radio and television broadcasting. (1) Introduction.

(a) This section provides tax reporting instructions for persons in the radio and television broadcasting industry. It explains the application of business and occupation (B&O) tax, retail sales tax, and use tax to the industry and provides an explanation of the various deductions available.

(b) For a discussion of the tax liabilities of subscriber television services, see WAC 458-20-227.

(c) For a discussion of the taxability of digital products, see WAC 458-20-15503.

(2) Definitions. For the purpose of this rule:

(a) "Broadcast" or "broadcasting" includes both radio and television commercial broadcasting stations unless it clearly appears from the context to refer only to radio or television.

(b) "Local advertising" means all broadcast advertising other than national, network, or regional advertising as herein defined.

(c) "National advertising" means broadcast advertising paid for by sponsors (~~which~~) that supply goods or services on a national or international basis.

(d) "Network advertising" means broadcast advertising originated by national or regional broadcast networks from outside the state of Washington, the broadcast advertising being supplied by national or regional network broadcasting companies.

(e) "Regional advertising" means broadcast advertising paid for by sponsors (~~which~~) that supply goods or services on a regional basis over two or more states.

(3) Business and occupation tax classifications. Persons in the radio and television broadcasting industry must report business and occupation (B&O) tax based on the B&O classification of their income, as follows:

(a) **Radio and television broadcasting.** (~~Taxable on~~) Gross income from the sale of radio or television advertising (~~(-)~~) is taxable under the radio and television broadcasting classification, subject to the deduction authorized under RCW 82.04.280 (1)(f)(i) or (ii). (See subsection (4)(b) of this section for more information on the deduction);

(b) **Service and other activities.** (~~Taxable on~~) Gross income from personal or professional services (~~(, including)~~) not taxed under a different classification, such as gross income from producing and making custom commercials or (~~(special programs)~~) custom-made programming, fees for providing writers, directors, artists, and technicians, and granting a license to use facilities (as distinct from the leasing or renting of tangible personal property, see WAC 458-20-211) (~~(-)~~) is taxable under the service and other classification;

(c) **Royalties.** (~~Taxable on~~) Gross income from charges to other broadcasters for granting the right to use intangible property (e.g., the right to use broadcast material) (~~(-)~~) is taxable under the royalties classification;

(d) **Retailing or wholesaling.** (~~Taxable on gross proceeds of~~) Gross income from sales of tangible personal property to consumers, including gross proceeds from sales of films and tape produced for general distribution and from sales of copies of commercials, pro-

grams, films, etc., is taxable under the retailing classification even though the original was not subject to retail sales tax. Gross income from sales of tangible personal property to persons other than consumers is taxable under the wholesaling classification. Gross income from the sale of custom-made programs, commercials, films, etc., is ~~(not)~~ taxable under ~~(this classification. (See subheading Service and other activities in (b) of this subsection.))~~ the service and other activities classification; and

(e) **Manufacturing.** ~~((Taxable on the cost to produce special))~~ The value of programs, such as public affairs, religious, travelogues, and other general programming, which are distributed via tangible media to other broadcasters under a lease or contract granting a mere license to use, is taxable under the manufacturing classification. (For a discussion of the taxability of digital products transferred electronically, see WAC 458-20-15503.) ~~((This))~~ Manufacturing B&O tax does not apply to a recording made for the broadcaster's own use, including news, delayed programs, commercials and promotions, special and syndicated programming, and "entire day" programming.

(4) **Deductions from gross income from advertising.**

(a) **Agency fees.** It is a general trade practice in the broadcasting industry to make allowances to advertising agencies in the form of the deduction or exclusion of a certain percentage of the gross charge made for advertising ordered by the agency for the advertiser. This allowance is deductible as a discount in the computation of the broadcaster's tax liability in the event that the allowance is shown as a discount or price reduction in the billing or that the billing is on a net basis, i.e., less the discount.

(b) **Gross receipts from national, network, and regional advertising.** ~~The ((taxpayer))~~ broadcasting station may deduct actual gross receipts from national, network, and regional advertising, as included in the gross amount reported under radio and television broadcasting, either by using the "standard deduction" or by itemization of the individual broadcasting station's actual receipts.

(i) The "standard deduction" for gross receipts from national, network, and regional advertising as provided by RCW 82.04.280, ~~((represents))~~ is a percentage based on the national average ~~((thereof as annually reported by the Federal Communications Commission. The Federal Communications Commission no longer publishes these figures and henceforth the "standard deduction" is not available. Broadcasters may only))~~ of national, network, and regional advertising as reported by the United States Census Bureau's economic census. The standard deduction percentage must be published by the department by rule by September 30, 2020, and by September 30th of every fifth year thereafter. The standard deduction percentage as of September 30, 2020, is sixty-two percent.

(ii) As an alternative to using the standard deduction in (b) (i) of this subsection, a broadcasting station may opt to deduct gross receipts from national, network, and regional advertising on an ~~((actual basis))~~ by itemizing the actual receipts therefrom.

(c) **Allocation of local advertising revenues.** Revenues from local advertising may be allocated to remove from the tax base the gross income from advertising ~~((which))~~ that is intended to reach potential customers of the advertiser who are located outside the state of Washington.

(i) **Presumption.** It will be presumed that the entire gross income of radio and television stations located within the state of Washington from local advertising is subject to tax unless ~~((and until))~~ the

taxpayer submits proof to the department (~~of revenue~~) that some portion of such income is exempt according to the principles set forth herein and until a specific allocation formula has been approved by the department.

~~((d))~~ (ii) Method of allocation.

(A) When the total daytime listening area of a radio or television station extends beyond the boundaries of the state of Washington, the allowable deduction is that portion of revenue represented by the out-of-state audience computed as a ratio to the broadcasting station's total audience as measured by the ~~((100 microvolt signal strength and delivery by wire, if any))~~ .5 millivolt/meter signal strength contour for AM radio, the one millivolt/meter or sixty dBu signal strength contour for FM radio, the twenty-eight dBu signal strength contour for television channels two through six, the thirty-six dBu signal strength contour for television channels seven through thirteen, and the forty-one dBu signal strength contour for television channels fourteen through sixty-nine with delivery by wire, satellite, or any other means, if any. The out-of-state audience may therefore be determined by delivery "over the air" and by community antenna television systems. However, community antenna television audiences may not be claimed by a station in the same area in which it claims an audience served over the air, thus eliminating a claim for double exemption.

(B) The most current United States and Canadian census figures must be used to determine the in-state and out-of-state audience.

~~((An engineer holding at least a first class operator's license from the Federal Communications Commission or an equivalent license must compute the 100 microvolt contour for the station claiming the exemption. The 100 microvolt contour will be applicable to all broadcasting stations, whether standard (AM), frequency modulation (FM), or television (TV), and the applicable contour will be the daytime ground wave contour. The computation must be submitted to the department of revenue in map form, showing the scale used in miles, with the contour drawn on the map and the counties or cities within the contour indicated. The map must be certified as being correct by the personal signature of the engineer making the computation. The type of license held by the engineer should be indicated. The map must have attached to it the population covered both within and without the state according to the applicable United States and Canadian census.))~~

(C) In the event that community antenna television subscribers are claimed as part of the out-of-state audience, the name of the systems, the location, and the number of subscribers must ~~((also))~~ be ~~((attached to the map))~~ provided to the department upon request. The number of subscribers will be multiplied by a factor of ~~((3))~~ 2.5, representing the average size household ~~((family.~~

~~The foregoing exhibits must be approved by the department before any deduction is allowable)).~~

(D) Upon request by the department, the broadcasting station must submit documentation substantiating the computation of the out-of-state exclusion to the department, as directed.

(5) Retail sales tax. ~~((Sales to))~~

(a) Purchases by broadcasters of equipment, supplies and materials for the broadcaster's own use and not for resale are subject to the retail sales tax. This includes ~~((sales))~~ purchases of raw or unprocessed film, magnetic tape, DVDs, and other transcription material.

(b) If the tapes, films, etc., upon which the sales tax has been paid are later sold by the broadcaster in the regular course of busi-

ness, the provisions of WAC 458-20-102 concerning purchases for dual purposes will apply.

(c) The broadcaster must collect retail sales tax on sales to consumers of packaged films, programs, etc., produced for general distribution, including training and industrial films, and also on sales of copies of films, commercials, programs, etc., even though the original was not subjected to retail sales tax.

(6) **Use tax.**

(a) Acquisition or exercise of the right to broadcast material under a right or license granted by lease or contract is not the use of tangible personal property by the broadcaster and the use tax is not applicable.

(b) Broadcasters of radio and television programs are subject to use tax on the value of articles manufactured or produced by them for their own use (excluding custom produced commercials or special programs which include((s))), but is not necessarily limited to, recordings of news, delayed programs, commercials and promotions, special and syndicated programming, and "entire day" programming) and on the use of tangible personal property purchased or acquired under conditions whereby the retail sales tax has not been paid. The broadcaster is liable for use tax on the value (cost of production) of programming when the broadcaster sells merely the right to broadcast such material under a right or license granted by lease or contract.