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RULE 100

APPEAL PROCEDURES

In any case of an account under audit where substantial agreement has not been reached between taxpayer and field auditor, the taxpayer is entitled to a preliminary conference with the auditor's immediate superior prior to finalization and submission of the audit report. Such conference is informal in nature and is intended to clarify the issues in dispute, resolving them, where possible, and, in any event, to effect agreement as to the facts and figures involved. In those cases where agreement cannot be reached at this level as to the tax interpretations applied, the report will be finalized and submitted to the Director, from whom, following his or her review and approval of the recommendations of the report, an assessment will be issued.

Tacoma Municipal Code (TMC) 6A.10.140 Administrative appeal. Any taxpayer aggrieved by the amount of any fee, tax, interest, or penalty found by the Department to be required under the provisions of this Subtitle 6A may, upon full payment of the amount assessed, appeal from such finding pursuant to the following procedures.

Form of appeal. Any appeal must be in writing and must contain the following:

1. The name and address of the taxpayer,
2. A statement identifying the determination of the Department from which the appeal is taken,
3. A statement setting forth the grounds upon which the appeal is taken and identifying specific errors the Department is alleged to have made in making the determination, and
4. A statement identifying the requested relief from the determination being appealed.

Time and place to appeal. Any appeal shall be filed with the City Clerk via the Customer Service Center (747 Market Street, Room 220, Tacoma, Washington 98402) no later than 21 days following the date on which the determination of the Department was mailed to the taxpayer. Failure to follow the appeal procedures in this section shall preclude the taxpayer's right to appeal.

Appeal hearing. The Office of the Hearing Examiner shall, as soon as practicable, fix a time and place for the hearing of such appeal, and shall cause a notice of the time and place thereof to be delivered or mailed to the parties. The hearing shall be conducted in accord with the provisions of TMC 1.23.

Burden of proof. The appellant taxpayer shall have the burden of proving by a preponderance of the evidence that the determination of the Department is incorrect.

Hearing record. The Hearing Examiner shall make an electronic sound recording of each appeal unless the appeal is conducted solely in writing.

Decision of the Hearing Examiner. Following the hearing, the Hearing Examiner shall enter a decision on the appeal, supported by written findings and conclusions in support thereof. A copy of the findings, conclusions and decision shall be mailed to the appellant taxpayer and to the Department. The decision shall state the correct amount of the fee, tax, interest or penalty owing.

Refund. If the Hearing Examiner determines that the taxpayer is owed a refund, such refund amount shall be paid to the taxpayer in accordance with Section 6A.10.100.

The Hearings Examiner may, by subpoena, require the attendance of any person, and may also require him/her to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place therein stated and produce the books and records required, if any, and shall testify truthfully under oath administered by the Hearings Examiner as to any matter required of him/her pertinent to the appeal, and it shall be unlawful for him/her to fail or refuse so to do.

TMC 6A.10.150 Judicial review. The decision of the Hearing Examiner may be appealed by any person having paid any assessment as required by the Department, except one who has failed to keep and preserve books, records, and invoices as required in this chapter, by filing a proper request for a writ of review with the Pierce County Superior Court. A request for a writ of review must be filed within 30 calendar days following the date that the decision of the Hearing Examiner was mailed to the parties. Review by the superior court shall be on, and shall be limited to, the record on appeal created before the Hearing Examiner. The Department shall have the same right of review from a decision of the Hearing Examiner as does a taxpayer.

Revised January 13, 2014
Revised January 18, 2012
Revised June 13, 1988
Revised August 5, 1987
Revised January 1, 1984
Revised January 1, 1982
Adopted January 1, 1976

RULE 101

REGISTRATION

Persons Required to Register. Every person who is required by law to collect and account for tax, or who shall engage in any business for which a tax is imposed under the Tacoma Municipal Code (TMC), shall, whether taxable or not, register with the Tax & License division. Registration is personal and nontransferable and is valid until cancellation is requested by the taxpayer.

Leased Departments. Operators of leased departments or concessions are permitted under certain conditions to include their tax liability on the returns of the lessor, or grantor of concession, instead of filing separate returns; nevertheless, such operators must register with the Tax & License division.

Original and Branch Locations. Whenever a taxpayer transacts business at two or more separate places in the city, a separate Application for Registration shall be required for each place at which business is transacted. An original registration shall be obtained for the main office or principal place of business from which returns are to be filed and a branch registration shall be obtained for each other place of business in this city.

Office or place of business. A fixed location or permanent facility where the regular business of the person is conducted and which is either owned by the person or over which the person exercises legal dominion and control. The regular business of the person is presumed conducted at a location:

A. Whose address the person uses as his or her business mailing address; and

B. Where the place of primary use is shown on a telephone billing or a location containing a telephone line, listed in a public telephone directory or other similar publication, under the business name; and

C. Where the person holds him- or herself out to the general public as conducting his or her regular business through signage or other means; and

D. Where the person is required to obtain any appropriate state and local business license or registration unless he or she is exempted by law from such requirement.

A vehicle such as a pick-up, van, truck, boat or other motor vehicle is not an office or place of business. A post office box is not an office or place of business.

If a person has an office or place of business, the person’s home is not an office or place of business unless it meets the criteria for office or place of business above.

If a person has no office or place of business, the person’s home or apartment within the City will be deemed the place of business.

Separate Registration for Branch. A taxpayer must make a separate return for each branch location unless otherwise approved by the Director.

Change in Ownership. Whenever there is a change in ownership of a business, the withdrawing owner, or owners, must notify the Tax & License division. The new owner shall apply for and obtain a new Registration upon completion of the required forms.

A "change in ownership" for purposes of registration occurs upon the sale of the business by one individual, firm or corporation to another individual, firm or corporation; upon the dissolution of a partnership; upon incorporation of a business previously operated as a partnership or sole proprietorship; or upon changing from a corporation to a partnership or sole proprietorship; or upon change of members of Limited Liability Company (LLC). No "change in ownership" occurs upon the transfer of assets to an assignee for the benefit of creditors or upon the appointment of a receiver or trustee in bankruptcy. Furthermore, no "change in ownership" occurs upon the death of a sole proprietor in those cases where there will be continuous operation of the business by the executor, administrator, or trustee of his estate or, where the business was owned by a marital community, by the surviving spouse/domestic partner of the deceased owner. A "change of ownership" for purposes of registration may also occur if the ownership entity changes their reporting identity numbers with the State of Washington or the Internal Revenue Service.

Change in Location or Name. Whenever the place of business is moved to a new location or the name under which business is conducted is changed, without change in ownership, the taxpayer must notify the Department, in writing, of the change.

Revoking or Suspending Registration. The Director may revoke or suspend the Registration of any taxpayer who is in default in any payment of any license fee or tax hereunder or who shall fail to comply with any of the provisions of Title 6 of TMC. Notice of such revocation/suspension shall be mailed to the taxpayer by the Director and, on and after the date thereof, any such taxpayer who continues to engage in business shall be deemed to be operating without a license and shall be subject to any and all penalties provided under Title 6 TMC.

Penalties for Noncompliance. Any person violating or failing to comply with any of the provisions of Chapter 6A TMC or any lawful rule or regulation adopted by the Director pursuant thereto, upon conviction thereof, shall be punished by a fine in any sum not to exceed one thousand dollars ($1,000), or by imprisonment not exceeding ninety days, or by both such fine and imprisonment.

Any taxpayer who engages in, or carries on, any business hereunder without having his/her Registration shall be guilty of a violation of Title 6B TMC for each day during which the business is so engaged in or carried on; and any taxpayer who fails or refuses to pay the license fee or tax, or any part thereof, on or before the due date, shall be deemed to be operating without having his/her license so to do may also be subject

to a civil penalty in the amount of $250 for each day during with the business is carried on in violation of Title 6B.

Revised December 2013
Revised June 13, 1988
Revised August 5, 1987
Revised January 1, 1984
Revised January 1, 1982
Adopted January 1, 1976

RULE 103

TIME AND PLACE OF SALE

"Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a "sale at retail," "retail sale," or "retail service." It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation, whether consumed upon the premises or not.

For the purpose of determining tax liability of persons selling tangible personal property, a sale takes place in this city when the goods sold are delivered to the buyer in this city, irrespective of whether title to the goods passes to the buyer at a point within or without this city.

With respect to the charge made for performing services which constitute sales as defined in TMC 6A.30.030, a sale takes place in this city when the services are performed herein. With respect to the charge made for renting or leasing tangible personal property, a sale takes place in this city when the property is used by the lessee in the City.

Where certificates are sold which will be redeemed in merchandise or in services which are defined by the TMC as retail sales, the income should be reported in the quarter the certificate is sold, based on the sales price of the certificate.

See Rule 131 which deals with merchandising games and which covers the situation where certificates or trade checks are issued which may be redeemed for services which are not retail sales, such as barber services, admissions, etc.)

Revised December 1, 2013
Revised January 19, 2012
Revised January 1, 1984
Revised January 1, 1982
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #102)

RULE 104

(Replaces repealed Rule 104- Minimum Tax)

SMALL BUSINESS TAX CREDIT

Effective January 1, 2011 the Tacoma city council adopted a small business tax credit to promote Tacoma's small businesses.
Eligible businesses with annual gross income between $250,001 and $300,000 will have a credit available and pay only a percentage of their tax due. The credit is made available to all businesses operating in the City whose annual gross income is $250,001 through $300,000.

The table below represents the Small Business Tax Credit.

Annual Gross Income From:	**Tax Credit % of Total Tax Due**
$250,001 through $260,000	90%
$260,001 through $270,000	80%
$270,001 through $280,000	70%
$280,001 through $290,000	45%
$290,001 through $300,000	25%

The small business tax credit can be taken in addition to other credits but is not refundable. The small business tax credit is limited to the amount of tax due, after any other credits are applied. This credit is applicable to business and occupation tax only and cannot be used to offset any other type of tax, i.e. admissions tax.

Example: A small business has manufacturing activity of $56,000 and retail sales of $220,000, the tax is $398.20. If the company manufactured the goods they sold at retail, the Multiple Activities Credit of $61.60 will be available in addition to the small business tax credit of $278.74 for a total tax due of $57.86.

Activity	Income	Tax
Manufacturing	56,000	61.60
Retail	220,000	336.60
Total	276,000	398.20
Multiple Activities Credit		(61.60)
Small Business Credit at 70%		(278.74)
Tax Due		57.86

Calculation of Small Business Credit:

Tax	$ 398.20
Credit Percent:	70%
Credit Available:	$ 278.74

Adopted January 1, 2011

RULE 105

EMPLOYEES DISTINGUISHED FROM PERSONS ENGAGING IN BUSINESS

The Tacoma Municipal Code imposes taxes upon persons engaged in business but not upon persons acting solely in the capacity of employees.

The question of whether a person is engaged in business or is acting in the capacity of an employee is not always readily determinable. The right to control is not limited to controlling the result of the work to be accomplished, but includes controlling the details and means by which the work is accomplished.The following rules may, however, be accepted as a guide but are not necessarily controlling in individual cases. In cases of doubt, all the facts should be submitted to the Tax and License division for a specific ruling.

Persons Engaging in Business. A person engaging in business is generally one who holds himself/herself out to the public as engaging in business either with respect to dealing in real or personal property or with respect to the rendition of services;

Entitled to receive the gross income of the business or any part thereof;

Liable for business losses or the expenses of conducting a business, even though such expenses may ultimately be reimbursed by a principal;

Controlling and supervising others, and being personally liable for their payroll, as a part of engaging in business;

Employing others to carry out duties and responsibilities related to the engaging in business and being personally liable for their pay;

Filing a statement of business income and expenses (Schedule C) for federal income tax purposes;

A party to a written contract, the intent of which establishes the person to be an independent contractor;

Paid a gross amount for the work without deductions for employment taxes (such as Federal Insurance Contributions Act, Federal Unemployment Tax Act, and similar state taxes).

Persons employed by retailers or wholesalers and selling, on their own account, tangible personal property of a type sold by their employers are deemed to be engaging in business and must apply for and obtain a business license and pay the business and occupation tax upon sales made by them, irrespective of the amount or frequency of such sales.

Persons who furnish equipment on a rental basis and also furnish operators therefore are presumed to be engaging in business and not to be employees or servants. Likewise, persons who furnish materials and the labor necessary in the placing or fabricating thereof are also presumed to be engaging in business and not to be employees or servants. The burden of proof will be upon such person to show otherwise.

Employees. The following conditions indicate that a person is an employee.

Receives compensation, which is fixed at a certain rate per day, week, month or year, or at a certain percentage of business obtained, payable in all events;
Is employed to perform services in the affairs of another, subject to the other's control or right to control;

Has no liability for the expenses of maintaining an office or other place of business, or any other overhead expenses or for compensation of employees;

Has no liability for losses or indebtedness incurred in the conduct of the business; and/or one whose conduct with respect to the obtainment or transaction of services rendered by the business is supervised or controlled by the employer;

Is generally entitled to fringe benefits normally associated with an employer-employee relationship, e.g., paid vacation, sick leave, insurance, and pension benefits;

Is treated as an employee for federal tax purposes;

Is paid a net amount after deductions for employment taxes, such as those identified in subsection (3)(h) of this section.
A corporation, joint venture, or any group of individuals acting as a unit is not an employee or servant.

The fact that a person is construed to be an employee under the provisions of the State Employment Security Act or the Federal Social Security Act does not conclusively establish such persons as an employee within the provisions of the Tacoma Municipal Code. Where a person is not construed to be an employee under the State Employment Security Act or the Federal Social Security Act, however, such person will not be considered an employee under the Tacoma Municipal Code.

Full-time life insurance salespersons. Chapter 275, Laws of 1991, effective July 1, 1991, provides that individuals performing services as full-time life insurance salespersons, as provided in section 3121 (d)(3)(B) of the Internal Revenue Code, will be considered employees. Treatment as an employee under this subsection (5) applies only to persons engaged in the full-time sale of life insurance. The status of other persons, including others listed in section 3121(d) of the Internal Revenue Code, will be determined according to the provisions of subsections (1) and (2) of this section (see Rule 164 for the proper tax treatment of insurance agents, brokers, and solicitors).

Operators of rented or owned equipment. Persons who furnish equipment on a rental or other basis for a charge and who also furnish the equipment operators, are engaging in business and are not employees of their customers. Likewise, persons who furnish materials and the labor necessary to install or apply the materials, or produce something from the materials, are presumed to be engaging in business and not to be employees of their customers.

Casual laborers. Persons regularly performing odd job carpentry, painting or paperhanging, plumbing, bricklaying, electrical work, cleaning, yard work, etc., for the public generally are presumed to be engaging in business. The burden of proof is upon such persons to show otherwise.

Booth renters. For purposes of the business and occupation tax a "booth renter," is considered engaged in business and not an employee. A "booth renter" is any person who:

(a) Performs cosmetology, barbering, esthetics, or manicuring services for which a license is required pursuant to chapter 18.16 RCW and

(b) Pays a fee for the use of salon or shop facilities and receives no compensation or other consideration from the owner of the salon or shop for the services performed.

(c) See Rule 118 for the proper treatment of amounts received for the rental or licensing of real estate and Rule 200 for the proper treatment of amounts received for leased departments.

Building Trades. Persons regularly performing odd job carpentry, painting or paperhanging, plumbing, bricklaying, electrical work, etc., for the public generally are presumed to be engaging in business. The burden of proof is upon such persons to show otherwise. Here it is immaterial whether the workman is paid by the job, by the day or by the hour. It is likewise immaterial that the workman may supply labor only, with materials used being supplied by the property owner.

Revised January 19, 2012
Revised January 1, 1984
Revised January 1, 1982
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #104)

RULE 106

CASUAL OR ISOLATED SALES; BUSINESS REORGANIZATIONS

A casual or isolated sale is defined by TMC 6A.30.030 as a sale made by a person who is not engaged in the business of selling the type of property involved. Any sales which are routine and continuous must be considered to be an integral part of the business operation and are not casual or isolated sales.

Furthermore, persons who hold themselves out to the public as making sales at retail or wholesale are deemed to be engaged in the business of selling, and sales made by them of the type of property which they hold themselves out as selling, are not casual or isolated sales, even though such sales are not made frequently.

In addition, the sale at retail by a manufacturer or wholesaler of an article of merchandise manufactured or wholesaled by him or her is not a casual or isolated sale, even though they may make but one such retail sale.

Deduction. The business and occupation tax does not apply to casual or isolated sales.

Revised January 19, 2012
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #105)

RULE 107

SELLING PRICE–ADVERTISED PRICES INCLUDING SALES TAX

"Selling price' means the total amount of consideration, including cash, credits, rights, or other property and services, for which tangible personal property, extended warranties, digital goods, digital codes, digital automated services, or other services defined as a retail sale are sold, leased, or rented, valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following: (i) The seller's cost of the property sold; (ii) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller; (iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges; (iv) delivery charges; and (v) installation charges.
Trade–Ins, see Rule 247.

Warranties and Maintenance Agreements, see Rule 257.

Advertised prices including sales tax. The retail sales tax must be stated separately from the selling price on any sales invoice or other instrument of sale, i.e. contracts, sales slips, and/or customer billing receipts. (For an exception covering restaurant receipts of Class H liquor licenses, see Rule 124.) This is required even though the seller and buyer may know and agree that the price quoted is to include state and local taxes, including the retail sales tax. Selling prices may be advertised as including the tax or that the seller is paying the tax and, in such cases, the advertised price shall not be considered to be the taxable selling price as explained in this rule, however, the actual sales invoices, receipts, contracts, billing documents and sales journal must list the actual price of the goods, with the retail sales tax stated as a separate charge. Failure to comply with this requirement shall result in the business and occupation retail tax being computed on the total amount charged.

RCW 82.08.055 provides that a seller may advertise prices as including the sales tax or that the seller is paying the tax, subject to the following conditions:

Unless the advertised price is one in a listed series, the words "tax included" are stated immediately following the advertised price and in print size at least half as large as the advertised price;

If the advertised prices are listed in a series, the words "tax included in all prices" are placed conspicuously at the head of the list and in the same print size as the advertised prices;

If a price is advertised as "tax included," the price listed on any price tag shall be shown in the same manner; and

All advertised prices and the words "tax included" are stated in the same medium, be it oral or visual, and if oral, in substantially the same inflection and volume.

If these conditions are satisfied, then price lists, reader boards, menus and other price information mediums need not reflect the actual item price and separately show the amount of sales tax being collected on any or all items.

Revised March 30, 2012
Revised June 13, 1988
Revised January 1, 1984
Revised January 1, 1982
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #106)

RULE 108

RETURNED GOODS, ALLOWANCES, CASH DISCOUNTS

When a contract of sale is made, (1) subject to cancellation at the option of one of the parties, or (2) to revision in the event the goods sold are defective, or (3) if the sale is made subject to cash or trade discount, the gross proceeds actually derived from the contract and the selling price are determined by the transaction as finally completed.

Returned Goods. When sales are made either upon approval or upon a sale or return basis and the purchaser returns the property purchased and the entire selling price is refunded or credited to the purchaser, the seller may deduct an amount equal to the selling price from gross proceeds of sales in computing tax liability. If the property purchased is not returned within the guaranty period as established by contract or by customs of the trade or if the full selling price Is not refunded or credited to the purchaser, a presumption is raised that the property returned is not returned goods but is an exchange or a repurchase by the vendor.

To Illustrate: S sells an article for $60.00 and credits the sales account. The purchaser returns the article purchased within the guaranty period and the purchase price theretofore paid by the buyer is refunded or credited to him. S may deduct $60.00 from the Gross Amount reported on the tax return.

Defective Goods. When bona fide refunds, credits or allowances are given within the guarantee period by a seller to a purchaser on account of defects in goods sold, the amount of such refunds, credits or allowances may be deducted by the seller in computing tax liability.
S sells an article to B for $60.00 and credits the sales account. The article is later found to be defective:

a. S gives B a credit of $50.00 on account of the defect. S may deduct $50.00 from the Gross Amount reported on S tax returns This is true whether or not B retains the defective article.

b. B returns the article to S who gives B an allowance of $50.00 on a second article of the same kind which B purchases for an additional payment of $10.00. S may deduct $50.00 from the Gross Amount reported on S tax returns. The sale of the second article, however, must be reported for tax purposes as a $60.00 sale and included in the Gross Amount on the tax return.

c. B returns the article to S who replaces it with a new article of the same kind free of charge. S may deduct $60.00 from the Gross Amount reported on S tax returns, but the $60.00 selling price of the substituted article must be reported in the Gross Amount.

No deduction is allowed from the Gross Amount reported for tax if S in "b" and "c" above does not credit the sales account with the selling price of the new article furnished to

replace the defective one but instead merely credits the sales account with an amount equal to the additional payment received, if any. In such case, the allowance for the defect is already shown in the sales account by the reduced sales price of the new article.

Discounts. The selling price of a service or of an article of tangible personal property does not include the amount of bona fide discounts actually taken by the buyer; and the amount of such discount may be deducted from gross proceeds of sales, providing such amount has been included in the Gross Amount reported. Discount deductions will be allowed under the Extracting or Manufacturing classifications only when the value of the products is determined from the gross proceeds of sales. Patronage dividends which are granted in the form of discounts in the selling price of specific articles (for example, a rebate of one cent per gallon on purchases of gasoline) are deductible. (Some types of patronage dividends are not deductible. See Rule 219.)

Revised March 9, 2012
Revised January 1, 1984
Revised January 1, 1982
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #107)
Adopted January 1, 1966 (Old Rule #107)

RULE 109

FINANCE CHARGES, CARRYING CHARGES, INTEREST, PENALTIES

Persons who receive finance charges, carrying charges, service charges, penalties and interest are taxable under the service and other business activities classification on the receipt of amounts from these sources.

1. Amounts received from these sources include but are not limited to: interest received by persons regularly engaged in the business of selling real estate.

2. Interest or finance charges received from an installment sale.

Persons engaged in financial business activities should refer to Rule 146.

Examples. The following examples identify a number of facts and then state a conclusion as to whether the situation results in taxable interest or finance charges. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) XYZ Furniture Company sells furniture and allows its customers to pay for the furniture over a twelve-month period. The seller charges interest at twelve percent per annum for allowing the customer to defer immediate payment. The interest charged the customer is a separate activity from the sale of the furniture and is taxable under the service and other business activities classification.

(b) John Doe sold his personal residence on contract. He receives monthly interest and principal payments. The interest is received in exchange for the seller's deferring receipt of immediate payment. The sale of the residence was not related to any other business activities and John Doe has sold no other real estate. The interest is not taxable under the business and occupation tax since the transaction was a casual and isolated sale.

Revised February 24, 2015
Revised January 19, 2012
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #108)

RULE 110

FREIGHT AND DELIVERY CHARGES

Amounts received by a seller from a purchaser for freight and delivery costs incurred by the seller prior to completion of sale constitute recovery of costs of doing business and must be included in the selling price or gross proceeds of sales reported by the seller regardless of whether charges for such costs are billed separately and regardless of whether the seller is also the carrier.

Freight and delivery costs incurred by a lessor, regardless of whether billed separately to a lessee or not, are costs of doing business to the lessor in every case and must be included in the selling price or gross proceeds of sales reported by the lessor. "Reimbursements" received by a seller for the actual amount of freight and delivery costs advanced for a purchaser after completion of sale are deductible from the selling price or gross proceeds of sales. (See Rule 111)

Where the seller is the carrier and separates delivery charges, in addition to the selling price, made to a purchaser after completion of sale, such charges may be deducted by the seller from the selling price. In such case the delivery charges are taxable to the seller under the classification of Service and Other Activities. (See Rule 180)
Note: See Rule 112 for the deduction of out-of-state freight and delivery charges from "value of products."

Revised January 18, 2012
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #109)

RULE 111

ADVANCES AND REIMBURSEMENTS

"Advance," as used herein, means money or credits received by a taxpayer from a customer or client in which the taxpayer is to pay costs or fees for the customer or client.

"Reimbursement," as used herein, means money or credits received from a customer or client to repay the taxpayer for money or credits expended by the taxpayer in payment of costs or fees for the client.

"Advance" and "reimbursement" apply only when the customer or client alone is liable for the payment of the fees or costs and when the taxpayer making the payment has no personal liability therefore, either primarily or secondarily, other than as agent for the customer or client.

There may be excluded from the measure of tax amounts representing money or credit received by a taxpayer as reimbursement of an advance in accordance with the regular and usual custom of their business or profession.

The foregoing is limited to cases wherein the taxpayer, as an incident to the business, undertakes, on behalf of the customer, guest or client, the payment of money, either upon an obligation owing by the customer, guest or client to a third person, or in procuring a service for the customer, guest or client which the taxpayer does not or cannot render and for which no liability attaches to the taxpayer. It does not apply to cases where the customer, guest or client makes advances to the taxpayer upon services to be rendered by the taxpayer or upon goods to be purchased by the taxpayer in carrying on the business in which the taxpayer engages.

For example, where a taxpayer engaging in the business of selling automobiles at retail collects from a customer, in addition to the purchase price, an amount sufficient to pay the fees for automobile license, tax and registration of title, the amount so collected is not properly a part of the gross sales of the taxpayer but is merely an advance and should be excluded from gross proceeds of sales. Likewise, where an attorney pays filing fees or court costs in any litigation, such fees and costs are paid as agent for the client and should be excluded from the gross income of the attorney.

On the other hand, no charge which represents an advance payment on the purchase price of an article or a cost of doing or obtaining business, even though such charge is made as a separate item, will be construed as an advance or reimbursement. Money so received constitutes a part of gross sales or gross income of the business, as the case may be. For example, no exclusion is allowed with respect to amounts received by (1) a doctor for furnishing medicine or drugs as a part of his/her treatment; (2) a dentist for furnishing gold, silver or other property in conjunction with his/her services; (3) a garage for furnishing parts in connection with repairs; (4) a manufacturer or contractor for materials purchased in their own name or in the name of their customer if the

manufacturer or contractor is obligated to the vendor for the payment of the purchase price, regardless of whether the customer may also be so obligated; or (5) any person engaging in a service business or in the business of installing or repairing tangible personal property for charges made separately for transportation or traveling expense.

Revised January 18, 2012
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #110)

RULE 112

VALUE OF PRODUCTS

"Value of products" includes the value of by-products and except as provided herein, shall be determined by "gross proceeds of sales," whether such sales are at wholesale or at retail, to which shall be added all subsidies and bonuses received with respect to the extraction, manufacture, or sale thereof.

“Gross proceeds of sales” means the value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated services and any other services without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discounts paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.” (TMC 6.30.030)

Bona Fide Sales of Products. In the case of bona fide sales of products, the law provides that, under the Extracting and Manufacturing classifications of the business and occupation tax, the value of products extracted or manufactured shall be determined by the gross proceeds of sales in every instance in which a bona fide sale of such products is made, whether sold at wholesale or at retail.

Sales to Points Outside the State. In determining the value of products delivered to points outside the city and/or the state, there may be deducted from the gross proceeds of sales so much thereof as the taxpayer can show to be actual transportation costs from the point at which the shipment originates in this city to the point of delivery outside this state.

Research and Development. The value of products manufactured or developed as a prototype for the development of a new or improved products is the retail selling price of the new or improved product when first offered for sale, or the value of the materials used to create the prototype in the event that the prototype is not offered for sale.

All Other Cases. The law provides that where products, including by-products, are extracted or manufactured are:

1. For commercial or industrial use (by the extractor or manufacturer--see Rule 134), and
2. Transported out of the City or to another person without prior sale, or
3. Sold under circumstances such that the stated gross proceeds from the sale are not indicative of the true value of the subject matter of the sale,

the value shall correspond as nearly as possible to the gross proceeds from other sales at comparable locations in this state of products of like quality and character, in similar quantities under comparable conditions of sale to comparable purchasers, and shall include subsidies and bonuses.

In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs.

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Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #111)

RULE 113

INGREDIENTS OR COMPONENTS, CHEMICALS USED IN PROCESSING NEW ARTICLES FOR SALE

"Retail sale" means "every sale of tangible personal property . . . other than a sale to one who purchases for the purpose of resale . . . or for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale.

Retailing Ingredients or Components**:** The sale of articles of tangible personal property which physically enter into and form a part of a new article or substance produced for sale does not constitute a retail sale.

Articles Purchased for Dual Purposes**:** Where an article purchased serves a dual purpose, tax liability under the retail sales tax is determined by the primary purpose for which the article is purchased. The fact that a portion of the article purchased actually becomes a physical part of the new article produced for sale is not in itself sufficient to constitute the sale thereof of a sale at wholesale, unless such use is the primary purpose for which the article was purchased. Thus, the sale of coal to a cement manufacturer which is used primarily as a fuel for producing heat is a taxable retail sale even though the ash from the burned coal is blown into the cement mixture and actually remains an ingredient thereof. Likewise, the sale of coke to a foundry to produce heat for melting iron or steel is a taxable retail sale, although a secondary purpose in using coke is to introduce carbon into the metal.

"Chemicals used in processing" carries its common restricted meaning in commercial usage. It includes only chemical substances which are used by the purchaser to unite with other chemical substances, present as ingredients or components of the articles or substances being processed, to produce a chemical reaction therewith, as contrasted with merely a physical change therein. A chemical reaction is one in which there takes place a permanent change of certain properties, with the formation of new substances which differ in chemical composition and properties from the substances originally present and usually differ from them in appearance as well. It is not necessary that all of the new substances which are formed be present in the final completed article or substance which is sold; one or more of such new substances resulting from the chemical reaction may be removed or drawn off in the processing.

To illustrate: Sales of chemicals to a pulp mill for use in the digesting and bleaching of pulp are not subject to the retail sales because such chemicals react chemically with the cellulose in the pulp fiber which, in turn, becomes a major ingredient of the final product, paper. Similarly sales of carbon to an aluminum reduction plant for the primary purpose of forming a chemical reaction with alumina to remove its oxygen content are not retail sales.

Conversely, sales of water purifiers and wetting agents to a pulp mill are taxable sales. The treated water acts primarily as a conveyor or carrier of the pulp fibers, and only an insignificant part of the water becomes an Ingredient of the final product. Similarly, sales of caustic soda to potato processors to remove peelings from potatoes are retail sales because the chemical reacts only with the peelings which are removed as waste and not with the potatoes which are sold as the final product.

Sales of diesel or fuel oil to a steel mill or foundry for use or consumption primarily in generating heat are retail sales and subject to the retail sales tax, notwithstanding the fact that some portion of the oil may cause a chemical reaction and to some extent alter the character of the article being manufactured or processed.

In special cases where doubt exists, a special ruling will be made by the Division of Tax and License upon submission of all the pertinent facts relative to the nature of the chemical substances concerned and the use made thereof by the purchaser.

Revised December 5, 2013
Revised January 1, 1984
Adopted January 1, 1976

RULE 114

BONA FIDE INITIATION FEES, DUES, CONTRIBUTIONS, DONATIONS, TUITION FEES AND ENDOWMENT FUNDS

Amounts derived from bona fide initiation fees, dues, contributions, donations, tuition fees and endowment funds may be deducted from the measure of tax under the business and occupation tax (TMC 6A.30.100©). This deduction is construed strictly, and such amounts may be deducted only if:

1. They are bona fide, and
2. They have been included in the Gross Amount reported under the classification with respect to which the deduction is sought, and
3. They have not been otherwise deducted through inclusion in the amount of an allowable deduction taken under such classification for another reason, and
4. They do not exceed the limitations hereinafter set forth.

Amounts which may be deducted as initiation fees are those amounts only which are actually required to be paid by a person to a club or similar organization for the sole privilege of joining such club or similar organization.

Amounts which may be deducted as dues are only those amounts which a member must pay toward the support of a club or similar organization in order to retain membership therein. Amounts which are for or graduated upon the amount of services rendered to a member of such club or organization may not be deducted.

The terms “dues” and “initiation fees” must be given their ordinary meaning and do not include, for example, amounts paid to trade or industry associations for services rendered, which payments are proportional to the size and volume of the member’s business or manufacturing operations.

The term “tuition fees” refers only to fees charged by educational institutions, and, in addition to instruction fees, includes library, laboratory, health and other special fees and amounts charged for room and board when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institutions.

“Educational institutions” allowed to deduct “tuition fees” are those which have been created or generally accredited as such by the state and which offer to students an educational program of a general academic nature and those which are not operated for profit and which are privately endowed under a deed of trust to offer instruction in trade, industry and agriculture, but does not include specialty schools, business colleges, other trade schools or similar institutions. Educational institutions which are entitled to the deduction include the following:

a. The common schools, the state normal schools, the University of Washington, the Washington State University and such other schools which are or may be

established by law and maintained at public expense as part of the “uniform school system” provided for in RCW 28.02.010;

b. Parochial schools and private schools accredited to schools of the “uniform school system” by the State Board of Education or the State Department of Education, and which are not specialty schools, business colleges, other trade schools or similar institutions;

c. Schools whose students and credentials are accepted without examination by the schools referred to in “a” and “b” above and which are not specialty schools, business colleges, other trade schools or similar institutions.

A business college, dancing school, music school or specialty school is not an “educational institution” within the meaning of that term as defined above. Tuition fees collected by such institutions are taxable under the Service and Other Activities classification of the business and occupation tax.

The rights to deduct bona fide initiation fees, dues, contributions, donations, tuition fees and endowment funds does not exempt any person, association or society from tax liability upon selling tangible personal property or upon providing facilities or services for which a special charge Is made to members or others.

Revised January 18, 2012
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #112)

RULE 115

SALES OF PACKING MATERIALS AND CONTAINERS

"Packing materials" means and includes all boxes, crates, bottles, cans, bags, drums, cartons, wrapping papers, cellophane, twines, gummed tapes, wire, bands, excelsior, waste paper, and all other materials in which tangible personal property may be contained or protected within a container for transportation or delivery to a purchaser.

Manufacturing. Persons who perform custom or commercial packing for others and who also manufacture the boxes, containers, or other packaging materials used by them in the packing are subject to the manufacturing tax and use tax on the value of the packing materials which they manufacture.

Persons who manufacture packing materials for delivery outside Washington or for their own commercial or industrial use are manufacturers and should refer to Rule 136 or Rule 134 Commercial or industrial use, and Rule 112 Value of Products.

Retailing. Sales of containers to persons who sell tangible personal property therein but who retain title to such containers which are to be returned, are sales for consumption. This class includes wooden or metal bottle cases, barrels, gas tanks, carboys, drums, bags and other items, when title thereto remains in the seller of the tangible personal property contained therein, even though a deposit is not made for the containers and when such articles are customarily returned. If a charge is made against a customer for the container, with the understanding that such charge will be canceled or rebated when the container is returned, the amount charged is deemed to be made as security for the return of the container and is not part of the selling price for tax purposes.

Title to containers, whether designated as returnable or nonreturnable, for beverages and food sold at retail, including beer, milk, soft drinks, mixers and the like, will be deemed to pass to the customer along with the contents. In such cases, amounts charged for the containers are part of the selling price of the food or beverage and subject to retailing tax when sold to consumers. Sales to persons who will resell the food or beverages are wholesale sales.

Sales of packing materials to persons engaged in the business of custom or commercial packing are sales for consumption and are taxable under the retailing classification.

Service & Other Activities. Persons who perform custom or commercial packing for others are generally taxable under the service and other tax classification on the income from the packing activity.

Wholesaling. Persons who operate cold storage warehouses or who perform processing for hire for others, which includes packaging the processed items, are not the consumers of the containers or other packaging materials. Sales of boxes, cartons,

and packaging materials to these persons are taxable under the wholesaling tax classification.

Sales of packing materials to persons who sell tangible personal property contained in or protected by packing materials are sales for resale and subject to tax under the wholesaling classification

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Revised January 1, 1982
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #113)

RULE 117

SALES OF DUNNAGE

“Dunnage" means any material used for the purpose of protecting or holding in place cargo or freight during transportation by any carrier of property, and which is not an integral part of the carrier itself. Dunnage includes, but is not limited to, wood blocks, stakes, separating strips, timber, double decks, false floors, door shields, bulkheads, and other bracing. Dunnage generally does not remain with the cargo that is being transported and will not be delivered to the person who will ultimately receive the cargo. On the other hand, packing materials are generally part of the total package containing the cargo and are ultimately delivered to the customer as part of the cargo or merchandise.

Persons selling dunnage to air, rail, or water carriers operating in interstate or foreign commerce should also refer to Rule 175.

Persons selling or purchasing packing materials should refer to Rule 115.

Retailing. Sales of dunnage to motor carriers and all other consumers.

Wholesaling. Gross proceeds derived from sales of dunnage to persons who resell the dunnage, without intervening use.

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Revised January 18, 2012
Revised January 1, 1984
Revised January 1, 1982
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #115)

RULE 118

SALE OR RENTAL OF REAL PROPERTY, LICENSE TO USE REAL PROPERTY, STANDING TIMBER, MINERALS, NATURAL RESOURSES

Amounts derived from the sale and rental of real estate are exempt from taxation under the business and occupation tax. However, there is no exemption of amounts derived from engaging in any business wherein a mere license to use or enjoy real property is granted. Amounts derived from the granting of a license to use real property are taxable under the service and other tax classification unless otherwise taxed under another classification, e.g., sale of lodging is taxed under the retailing classification. Further, no exemption is allowed for amounts received as commissions for the sale or rental of real estate. For purposes of distinguishing the lease or rental of real estate from the granting of a license to use real estate use the following principles.

Lease or Rental of Real Estate. A lease or rental of real property conveys an estate or interest in a certain designated area of real property with an exclusive right in the lessee of continuous possession against the world, including the owner, and grants to the lessee the absolute right of control and occupancy during the term of the lease or rental agreement. An agreement will not be construed as a lease of real estate unless a relationship of "landlord and tenant" is created thereby. It is presumed that the sale of lodging by a hotel, motel, tourist court, etc., for a continuous period of thirty days or more is a rental of real estate. It is further presumed that all rentals of mini-storage facilities, apartments and leased departments constitute rentals of real estate.

License to Use Real Estate. A license grants merely a right to use the real property of another but does not confer exclusive control or dominion over the same. Usually, where the grant conveys only a license to use, the owner controls such things as lighting, heating, cleaning, repairing and opening and closing the premises.
It will be presumed that license to use or enjoy real property is granted in the rental of the following:

1. Hotel rooms for periods of less than 30 continuous days. (Rule 166)
2. Hotels, tourist courts and trailer parks for periods of less than 30 continuous days. (Rule 166)
3. Storage space. (Rule 182)
4. Frozen storage lockers.
5. Safety deposit boxes.
6. Space within park or fair grounds to a concessionaire.
7. In the water boat moorage less than 30 continuous days.

Standing Timber, Minerals, Natural Resources. Amounts derived from the sale of standing timber, minerals in place, and other natural resources in place are sales of real estate and are not subject to the business and occupation tax. However, timber, minerals, and other natural resources, after being severed from the real estate, lose their identity as real property, and sales after severance are subject to the retailing business and occupation tax.

Any person who cuts timber, mines or quarries minerals, or takes other natural resources is subject to business and occupation tax under the extractor classification. (See Rule 135).

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Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #116)

RULE 119

SALES OF MEALS

The sales of meals and the providing of meals as a part of services rendered are subject to tax as follows. This rule also gives tax reporting information to persons who provide meals without a specific charge. Persons in the business of operating restaurants should also refer to Rule 124 and persons operating hotels, motels, or similar businesses should refer to Rule 166.

Retailing.

Restaurants, cafeterias and other eating places. Sales of meals to consumers by restaurants, cafeterias, clubs, and other eating places are subject to the retailing tax.

Caterers. Sales of meals and prepared food by caterers are subject to the retailing tax when sold to consumers. "Caterer" means a person who provides, prepares and serves meals for immediate consumption at a location selected by the customer. The tax liability is the same whether the meals are prepared at the customer's site or the caterer's site. The retailing tax also applies when caterers prepare and serve meals using ingredients provided by the customer. Persons providing a food service for others should refer to the subsection below entitled "Food service contractors."

Hotels, motels, bed and breakfast facilities, resort lodges and other establishments offering meals and transient lodging. Sales of meals by hotels, motels, and other persons who provide transient lodging are subject to the retailing tax.

Boarding houses, American plan hotels, and other establishments offering meals and non-transient lodging. Sales of meals by boarding houses and other such places are subject to retailing tax.

(A) Except for guest ranches and summer camps, when a lump sum is charged to non-transients for providing both lodging and meals, the fair selling price of the meals is subject to the retailing tax. Unless accounts are kept showing the fair selling price, the tax will be computed upon double the cost of the meals served. This cost includes the price paid for food and drinks served, the cost of preparing and serving meals, and all other incidental costs, including an appropriate portion of overhead expenses.

(B) It will be presumed that guest ranches and summer camps are not making sales of meals when a lump sum is charged for the furnishing of lodging and meals are included.

Railroad, ship, airplane, or other transportation company diners. Sales of meals by a railroad, Pullman car, ship, airplane, or other transportation company served at fixed locations in the city, or served upon the carrier itself while within the city, are subject to the retailing tax.

Where no specific charge is made for meals separate and apart from the transportation charge, the entire amount charged is deemed a charge for transportation and the retailing tax does not apply to any part of the charge.

Hospitals, nursing homes, and other similar institutions. The serving of meals by hospitals, nursing homes, and similar institutions to patients as a part of the service rendered in the course of business by such institutions is not a sale at retail. However, many hospitals and similar institutions have cafeterias or restaurants through which meals are sold for cash or credit to doctors, visitors, nurses, and other employees. Some of these institutions have agreements where the employees are paid a fixed wage in payment for services rendered and are provided meals at no charge. Under those circumstances, all sales of meals to such persons are subject to the retailing tax, including the value of meals provided at no charge to employees. Refer to the subsection below entitled “Meals furnished to employees.”

School, college, or university dining rooms. Public schools, high schools, colleges, universities, or private schools operating lunch rooms, cafeterias, dining rooms, or snack bars for the exclusive purpose of providing students and faculty with meals or prepared foods are not considered to be engaged in the business of making retail sales of meals. However, if guests are permitted to dine with students or faculty in such areas, the sales of meals to the guests are retail sales.

(A) Unless the eating area is situated so that it is available only to students and faculty, the lunch room, cafeteria, dining room, or snack bar must have a posted sign stating that the area is only open to students and faculty. In the absence of such a sign, there will be a presumption that the facility is not exclusively for the use of students and faculty. The actual policy in practice in these areas must be consistent with the posted policy.

(B) If the cafeteria, lunch room, dining room, or snack bar is generally open to the public, all sales of meals, including meals sold to students, are considered retail sales.

(C) For some educational institutions, the meals provided to students are considered to be part of the charge for tuition and may not be subject to business and occupation tax. Public schools, high schools, colleges, universities, and private schools should refer to Rule 167 to determine whether the retail business and occupation tax applies to the sales of meals described above. (See also Rule 189 for a discussion of business and occupation tax for schools operated by the state.)

Fraternities and sororities. Fraternities, sororities, and other groups of individuals who reside in one place and jointly share the expenses of the household including expense of meals are not considered to be making sales when meals are furnished to members.

Wholesaling. Persons making sales of prepared meals to persons who will be reselling the meals are subject to the wholesaling tax classification.

Service and other business activities. Private schools, which do not meet the definition of “educational institutions,” operating lunch rooms, cafeterias, or dining rooms for the exclusive purpose of providing meals to students and faculty are subject to the

service and other tax on the charges to students and faculty for meals. (See Rule 167 for definitions of the terms “private school” and “educational institution.”) Persons managing a food service operation for a private school should refer to the subsection below entitled “Food service contractors.”

Food service contractors. The term “food service contractor” means a person who operates a food service at a kitchen, cafeteria, dining room, or similar facility owned by an institution or business. Food service contractors may manage the food service operation on behalf of the institution or business, or may actually make sales of meals or prepared foods.

Sales of meals. Food service contractors who sell meals or prepared foods to consumers are subject to the retail tax upon their gross proceeds of sales. For example, the operation of a cafeteria which provides meals to employees of a manufacturing or financial business is generally a retail activity. The food service contractor is considered to be making retail sales of meals, whether payment for the meal is made by the employees or the business, unless the business itself is reselling the meals to the employees.

In all cases where the meals are prepared at offsite facilities not owned by the institution or business, the food service contractor is considered to be making sales of meals and the retail tax apply to the gross proceeds of sale.

Food service management. The gross proceeds derived from the management of a food service operation are subject to the service and other tax. These tax reporting provisions apply whether the staff is actually preparing the meals or prepared foods are employed by the institution or business hiring the food service contractor, or by the food service contractor itself. If the food service contractor merely manages the food service operation on behalf of an institution or business, that institution or business is considered to be selling meals or providing the meals as a part of the services the institution or business renders to its customers.

Food service management includes, but is not limited to, the following activities:

Food service contractors operating a cafeteria or similar facility which provides meals and prepared food for employees and/or guests of a business, but only where the business owning the facility is the one actually selling the meals to its employees.

Food service contractors managing and/or operating a cafeteria, lunch room, or similar facility for the exclusive use of students or faculty at an educational institution or private school. The educational institution or private school provides these meals to the students and faculty as a part of its educational services. The food service contractor is managing a food service operation on behalf of the institution, and is not making retail sales of meals to the students, faculty, or institution. Sales of meals or prepared foods to guests in such areas are, however, subject to the retail tax. (Refer also to the subsection above entitled “School, college, or university dining rooms.”)

Food service contractors managing and/or operating the dietary facilities of a hospital, nursing home, or similar institution, for the purpose of providing meals or prepared foods to patients or residents thereof. These meals are provided to the patients or residents by the hospital, nursing home, or similar institution as a part of the services rendered by the institution. The food service contractor is managing a food service operation on behalf of the institution, and is not considered to be making retail sales of meals to the patients, residents, or institution. Meals sold to doctors, nurses, visitors, and other employees through a cafeteria or similar facility are, however, subject to the retailing B&O tax. (Refer also to the subsection above entitled “Hospitals, nursing homes, and other similar institutions.”)

Meals furnished to employees. Sales of meals to employees are sales at retail and subject to the retail tax classification. This is true whether individual meals are sold, whether a flat charge is made, or whether meals are furnished as a part of the compensation for services rendered.

Where a specific and reasonable charge is made to the employee, the measure of the tax is the selling price.

Where no specific charge is made, the measure of the tax will be the average cost per meal served to each employee, based upon the actual cost of the food.

Where meals furnished to employees are not recorded as sales, the tax due shall be presumed to apply according to the following formula for determining meal count:

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

Gratuities. Tips or gratuities representing donations or gifts by customers under circumstances which are clearly voluntary are not part of the selling price subject to tax. However, mandatory additions to the price by the seller whether labeled service charges, tips, gratuities, or otherwise must be included in the selling price and are subject to the retail tax.

Revised January 18, 2012
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #117)

RULE 120

SALES OF ICE

Retailing. Sale of ice to fishermen for the purpose of packing and preserving their fish during the trip from the fishing banks to their port of discharge are sales for consumption.
Sales of ice to persons other than railroad companies for use in icing refrigerator cars are sales for consumption.
Sales of ice to persons operating creameries, taverns, bars, breweries, restaurants, soda fountains and the like are sales for consumption when such ice is used primarily for the purpose of cooling food products and is not for resale to customers.

Wholesaling. Sales of ice to persons who sell fish, fruit, vegetables and other commodities are sales for resale when such ice is used for packing during shipment and title thereto passes to the purchaser along with the property sold.
Sales of ice to persons operating restaurants, soda fountains and the like are sales for resale when such ice is used exclusively as crushed ice in drinks sold by such persons.

Revised January 19, 2012
Revised January 1, 1984
Revised January 1, 1982
Adopted January 1, 1976

RULE 121

SALES OF HEAT or Steam – including production by cogeneration

Service and Other. Persons engaging in the business of operating a plant for the production, extraction, or storage of heat for distribution, for hire or sale, whether such heat is produced by a biomass system, cogeneration, geothermal sources, fossil fuels, or otherwise, are subject to the provisions of the business and occupation tax and are taxable under the service and other classification.

Revised March 9, 2012
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #118)

RULE 123

PUBLIC AND LENDING LIBRARIES

"Public libraries" means libraries operated by the state or by any governmental unit. "Lending libraries" has reference to all libraries other than those operated by the state or by a governmental unit.

Retailing. Lending libraries are taxable under the retailing classification upon the gross proceeds of sales of all books and periodicals.

Service and Other. Lending libraries are taxable under the service and other activities classification upon the gross income received from books and periodicals loaned by them.
Public libraries are not subject to the provisions of the business and occupation tax.

Revised January 18, 2012
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #120)

RULE 124

RESTAURANTS, COCKTAIL BARS, taverns and similar businesses

“Restaurants, cocktail bars, taverns and similar businesses" means every place where prepared foods and beverages are sold and served to individuals, generally for consumption on the premises where sold.
Persons operating restaurants and similar businesses should also refer to Rule 119. Persons who merely manage the operations of a restaurant or similar business should also refer to Rule 119 to determine their tax liability.

Retailing. Sales to consumers of meals and prepared foods by restaurants, cocktail bars, taverns and similar businesses are subject to the retailing tax classification. Meals provided to employees are presumed to be in exchange for services received from the employee and are retail sales and also subject to the retailing tax. (See Rule 119, Sales of meals.)

Wholesaling. Persons making sales of prepared meals to persons who will be reselling the meals are subject to the wholesaling tax classification.

Service and Other. Compensation received from owners of coin-operated machines for allowing the placement of those machines at the restaurant, cocktail bar, tavern, or similar business is subject to the service and other activities tax. Persons operating games of chance should refer to Rule 131.

Deductions. Amounts derived from the sale of liquor, as the term is defined in Revised Code of Washington, Section 66.04.010, may be deducted from the measure of tax.

Combination businesses. Persons operating a combination of two kinds of food sales businesses, of which one is the sale of food for immediate consumption (i.e., a bakery selling food products ready for consumption and in bulk quantities), are required to keep their accounting records and sales receipts segregated between retailing and wholesaling activities.

Discounted meals, promotional meals, and meals given away. Persons who sell meals on a "two for one" or similar basis are not giving away a free meal, but rather are selling two meals at a discounted price. The retailing tax should be calculated on the reduced price actually received by the seller.

Persons who provide meals free of charge to persons other than employees are consumers of those meals. For example, a restaurant providing meals to the homeless or hot dogs free of charge to a little league team will not incur a retailing tax liability with respect to these items given away. A sale has not occurred.

Gratuities. Tips or gratuities representing donations or gifts by customers under circumstances which are clearly voluntary are not part of the selling price subject to tax. However, mandatory additions to the price by the seller, whether labeled service

charges, tips, gratuities or otherwise must be included in the selling price and are subject to retail tax. (See Rule 119)

Vending machines and amusement devices. Persons owning and operating vending machines and amusement devices should refer to Rule 187.

Revised January 19, 2012
Revised October 5, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #121)

RULE 128

REAL ESTATE BROKERS AND SALESPERSONS

"Real estate broker" and "real estate salesperson" mean, respectively, a person licensed as such under the provisions of Chapter 18.85 R.C.W., Laws of Washington.

Business and Occupation Tax
A real estate broker is engaged in business as an independent contractor and is taxable under the service and other activities classification upon the gross income of the business.

The measure of the tax on real estate commissions earned by a real estate broker is the gross commission earned by the particular real estate brokerage office including that portion of the commission paid to salespersons in the same office on a particular transaction provided however, that, where a real estate commission is divided between an originating brokerage office and a cooperating brokerage office on a particular transaction, each brokerage office shall pay the tax only upon their respective shares of said commission and provided further that, where the brokerage office has paid the tax as provided herein, brokers within the same brokerage office shall not be required to pay a similar tax upon the same transaction.

With the exception of cooperating brokerage offices, no deduction is allowed for commissions, fees or salaries paid by a broker to another broker or salesperson or for other expenses of doing business.

The term "gross income of the business" includes gross income from commissions, fees and other emoluments however designated which the salesperson or broker receives or becomes entitled to receive but does not include amounts held in trust for others. (See also Rule 111, Advances and Reimbursements.) No deductions are allowed for dues, charges, and fees paid to multiple listing associations.

Real estate salespeople are presumed to be independent contractors subject to the service and other activities classification of the business and occupation tax. The tax is due on gross income from real estate commissions and fees earned, unless the brokerage office at which the real estate salesperson's license is posted has paid the tax on the gross commission.

Revised August 16, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #123)

RULE 129

SALES OF MOTOR VEHECLE FUEL AND SPECIAL FUELS/GASOLINE SERVICE STATIONS

Retailing. Persons operating gasoline service stations are taxable under the retailing classification upon the gross income from sales of tangible personal property and upon services rendered with respect to the cleaning or repair of such property.
Gross income received from towing of cars is taxable under the retailing or wholesaling classification.

Exemption. Persons engaging in producing, selling or distributing motor vehicle fuel where they have paid the Washington state fuel excise tax may deduct from gross income of sales the amount of gross income of sales of motor vehicle fuel as defined in RCW 82.36.010 and exempt under RCW 82.36.440.

The taxpayer must have records to substantiate that they have paid the state fuel excise tax to take the city exemption.

Retail Services. Gross income received from automobile parking and storage garage services is taxable under the retail service classification.

Revised November 12, 2013
Revised October 6, 2010
Revised January 1, 1984
Adopted January 1, 1976

RULE 131

MERCHANDISING GAMES, GAMES OF CHANCE AND CONCESSIONAIRES

Merchandising Games for Stimulating Trade. Persons conducting games of chance which determine the amount the customer will pay for merchandise that they desire to purchase are taxable as follows:

Retailing. Gross income received from the retail selling price of all merchandise sold to or won by customers.
Gross income received from pull tabs which offer prizes of merchandise are considered merchandising games, with the prizes being sold for the gross proceeds from the boards and pull tabs.

When punchboards and pull tabs are consigned to a location under an arrangement for a split of the gross income between the owner of the boards and pull tabs and the person operating the location, the owner of the boards and pull tabs shall be responsible for reporting gross receipts received under the retailing classification. Where the owner of the boards and pull tabs has not paid the tax due, however, the Division may proceed directly against the operator of the location for payment of the tax due.

This method of reporting tax liability will be allowed only in those cases where the operator of the games, by proper accounting methods, accurately segregates the receipts accruing from such games. Where no such segregation is made, such persons are taxable under the service and other activities classification with respect to the entire gross receipts from such games.

Service and Other. Gross income received from “increases” arising from the conduct of such games.

“Increases" means the winnings, gains or accumulations accruing daily over and above the retail selling price of all merchandise sold or won in any one day through such games.

Games of Chance Other Than Merchandising Games. Persons conducting card games, bingo games, “pools,” or similar games of chance wherein players participate in such games with the opportunity of winning a certain sum of money, or a pool which accumulates, or scrip, or trade checks, are taxable under the service and other activities classification upon all “increases” arising from the conduct of such games.

“Increases” means the winnings, gains, or accumulations accruing from any one game over and above the amount put into the game by the operator; and, where redeemable scrip or trade checks are issued to winning players, the word "increases" means the excess of the operator's cash income from the game over the amount of redeemable scrip or trade checks issued.

It is essential to the classification of such revenues, as income from service and other activities, that they be segregated properly from income derived from merchandising games. When the income from games of chance and amusement is not segregated properly from income from merchandising games, the income derived from both types of games will be taxable as income derived from service and other activities.

Punchboards and pulltabs which offer cash prizes are games of chance rather than merchandising games, and the "increases" (as defined above) there from should be reported under the service and other activities classification. When such punchboards and pulltabs are consigned to a location under an arrangement for a split of the gross increases between the owner of the boards and pulltabs and the person operating the location, the owner of the boards and pulltabs shall be responsible for reporting gross increases there from under the service and other activities classification. Where the owner of the boards and pulltabs has not paid the tax due, however, the Division may proceed directly against the operator of the location for payment of the tax due.

Each type of game is considered as a separate, taxable transaction. Thus, losses on one type of game may not be deducted from winnings on another type of game.

Concessionaires. Persons conducting games of chance at fairs, carnivals, expositions, bazaars, picnics and other similar places in which merchandise is delivered to players in the form of prizes and awards are taxable under the service and other activities classification upon the gross income received from the operation of such games, less the cost of prizes. The predominant characteristic of the business in such cases is chance and amusement, and the transfers of merchandise in the form of prizes and an award is relatively small and does not constitute sales of such merchandise.

Raffles. Persons regularly conducting raffles are subject to the business and occupation tax under the service and other activities classification on the gross income from the sale of chances less the cost of prizes.

Redemption of Scrip, Trade Checks, or Hickies. When scrip, trade checks, or hickies are redeemed in exchange for merchandise or for services which are defined by the law as retail sales, the value of the scrip, etc., so redeemed should be reported as income under the retailing classification. When scrip, trade checks, or hickies are redeemed in exchange for services which are not defined by law as retail sales, e.g., haircuts, manicures, etc., the value of the scrip, etc., so redeemed should be reported as income under the service and other activities classification.

Miscellaneous. Revenues of card rooms, etc., from all activities other than those which are reportable under the retailing classification, must be reported under the service and other activities classification.

Exemptions. Any bona fide charitable or nonprofit organization conducting or operating gambling activities whose gross income from such activities shall be deductible from

service and other activities tax as defined in TMC 6A.30.100.B and is also exempt from the gambling tax in TMC 6A.60.

Gambling Tax. Refer to TMC 6A.60 for information on activities that are subject to gambling tax.

Revised January 19, 2012
Revised October 6, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #126)

RULE 132

AUTOMOBILES FOR DEMONSTRATION PURPOSES

“Demonstration" and "demonstrator" mean the use of automobiles provided by dealers to their sales staff, without charge, for any personal or business reason other than (or in addition to) the mere display of such vehicles to prospective purchasers.

"Display" means the showing for sale of vehicles to prospective purchasers, at or near the dealer's premises, including the short term test driving, operating, and examining by prospective purchasers.

“Executive use vehicle" means any vehicle from sales inventory, used by any person associated with the automobile dealership for personal driving, other than for demonstration or display purposes as defined above, when such person does not have a recent model vehicle registered and licensed in that person's own name on which retail sales tax was paid.

“Recent model vehicle" refers to a car of the current model year or either of the two preceding model years.

“Purchase price" and "total cost" mean the amount charged to the dealer for the purchase of a vehicle and includes any additional charges for accessories installed on the vehicle. If the vehicle was acquired through a trade-in by a customer, these terms then mean the trade-in value given to the customer by the dealer (with consideration of under allowances and over allowances) as well as any costs of refurbishing and repairs in preparing the vehicle for resale or use. These values will generally be the amounts shown as the vehicle cost within the dealer's inventory records.

Automobile dealers are taxable under the retailing classification upon the sale or lease of automobiles, parts or accessories to their employees or other representatives for personal use, including demonstration.

The business and occupation tax will not apply upon the transfer of vehicles to employees or other representatives for their personal use, including demonstration where no sale occurs.

Revised January 19, 2012
Revised October 6, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #127)

RULE 134

COMMERCIAL OR INDUSTRIAL USE

"Commercial or industrial use" means the following uses of products, including by-products, by the same person that extracted or manufactured them:

(1) Any use as a consumer
(2) The manufacturing of articles, substances or commodities

Following are examples of commercial or industrial use:

(a) The use of lumber by the manufacturer of that lumber to build a shed for its own use.
(b) The use of a motor truck by the manufacturer of that truck as a service truck for itself.
(c) The use by a boat manufacturer of patterns jigs and dies which it has manufactured.
(d) The use by a contractor building or improving a publicly owned road of crushed rock or pit run gravel which it has extracted.

Persons manufacturing or extracting tangible personal property for commercial or industrial use are subject to manufacturing or extracting business and occupation tax, as the case may be. The tax is measured by the value of the product manufactured or extracted and used. (See Rule 112 for definition and explanation of value of products.)

Revised July 11, 2013
Revised October 6, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #129)

RULE 135

EXTRACTING NATURAL PRODUCTS

"Extractor" means every person who, from their own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use, mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product; or fells, cuts or takes timber, Christmas trees or other natural products; or takes, cultivates, or raises fish, shellfish, or other sea or inland water foods or products. An extractor does not include persons performing under contract, the necessary labor or mechanical services for others or farmers.

This rule explains the application of the business and occupation tax to extracting natural products.

The following examples are illustrative of operations which are included within the extractive activity:

1. Logging operations, including the bucking, yarding, and loading of timber or logs after felling, as well as the actual cutting or severance of trees.
2. Mining or quarrying operations, including the activities incidental to the preparation of the products for market, such as screening, sorting, washing, crushing, etc.
3. Fishing operations, including the cultivating or raising, in fresh or salt water, of fish, shellfish, or other sea or inland water foods or products (whether on publicly or privately owned beds, and whether planted and cultivated or not) for sale or commercial use. It includes the removal of the meat from the shell, and the cleaning and icing of fish or sea products by the person catching or taking them.

Extracting--Local Sales. Persons who extract products in this city and sell the same at retail in this city are subject to the business and occupation tax under the retailing classification and those who sell such products at wholesale in this city are taxable under the wholesaling classification. Persons taxable under the retailing and wholesaling are taxable under the extracting classification with respect to the extracting of products so sold within this city, and may claim a multiple activities tax credit (MATC) against the selling classification tax (see Tacoma Municipal Code 6A.30.070 for a more detailed explanation of the MATC reporting requirements.)..

Extracting--Interstate or Foreign Sales. Persons who extract products in the city and sell the same in interstate or foreign commerce are taxable under the extracting classification upon the value of the products sold, and are not taxable under retailing or wholesaling in respect to such sales. (See also Rule 193.)

Extracting--for Commercial Use. Persons who extract products in this city and use the same as raw materials or ingredients of articles which they manufacture for sale are not

taxable under extracting. (For tax liability of such persons on the sale of manufactured products see Rule 136, Manufacturing, Processing for Hire, Fabricating.)
Persons who extract products in this city for any other commercial or industrial use are taxable under extracting on the value of products extracted and so used. (See Rule 134 for definition of commercial or industrial use.)

Extracting for Others. Persons performing under contract, either as prime or subcontractors, the necessary labor or mechanical services for others who are engaged in the business as extractors, are taxable under the service and other activities classification of the business and occupation tax upon their gross income from such service.

Revised May 25, 2016
Revised October 6, 2010
Revised January 1. 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #130)

RULE 135

MANUFACTURING, PROCESSING FOR HIRE, FABRICATING

This rule explains the application of the business & occupation tax to manufacturers and processor for hire.

Manufacturing--Local Sales. Manufacturers who sell their products at retail or wholesale within the city are taxable under either the retailing classification or wholesaling classification. In such cases, the maufacturers must report under the manufacturing and retailing or wholesaling classifications of the business and occupation tax, and claim a multiple activities tax credit (MATC) (See Tacoma Municipal Code 6A.30.070 for a more detailed explanation of the MATC reporting requirements.)

Manufacturing--Interstate or Foreign Sales. Persons who manufacture products in this city and sell the same in interstate or foreign commerce are taxable under the manufacturing classification upon the value of the products so sold, and are not taxable under retailing or wholesaling in respect to such sales. (See also Rule 193A) The generation or production of electrical energy for resale or consumption outside the city is subject to tax under the Manufacturing classification.

Manufacturing for Commercial Use. Persons who manufacture products in this city for commercial or industrial use are taxable under the classification manufacturing on the value of the products used. (See Rule 134 for definition of commercial or industrial use.)

Processing for Hire. Persons processing for hire for consumers or for persons other than consumers are taxable under either the retailing or wholesaling classifications upon the total charge made therefor.

Materials Furnished in Part by Customer. In some instances, the person furnishing the labor and mechanical services undertakes to produce a new article, substance, or commodity from materials or ingredients furnished in part by them and in part by the customer. In such instances, tax liability is as follows:

1. The person furnishing the labor and mechanical services will be presumed to be the manufacturer if the value of the materials or ingredients furnished by them is equal to or exceeds 20% of the total value of all materials or ingredients which become a part of the finished product.
2. If the person furnishing the labor and mechanical services furnishes materials constituting less than 20% of the value of all of the materials which become a part of the finished product, such person will be presumed to be processing for hire. The person for whom the work is performed is the manufacturer in that situation, and will be taxable as such.

In cases where the person furnishing the labor and mechanical services supplies, sells, or furnishes to the customer, or purchases for the account of the customer, before

processing, 20% or more in value of the materials from which the finished product is made, the person furnishing the labor and mechanical services will be deemed to be the owner of the materials and taxable as a manufacturer.

Revised May 25, 2016
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #131)

RULE 139

TRADE SHOPS: PRINTING PLATE MAKERS, TYPESETTERS, AND TRADE BINDERIES

“Printing plate makers” include, among others, photoengravers, electrotypers, stereotypers, and lithographic plate makers.

Retailing. Printing plate makers, typesetters and trade binderies (referred to in the trade as "trade shops") are primarily engaged in the business of altering or improving tangible personal property owned by them for sale or altering or improving tangible personal property owned by their customers. In either case the gross proceeds (including the value of any property exchanged by the customer in kind) from sales of, or services rendered to, plates, mats, engravings, type, etc., which are delivered in this city are taxable under the retailing classification if the sale is to a consumer.

Wholesaling. If the sale is to a person who will resell the property in the regular course of business without intervening "use" then it is taxable under the wholesaling classification. (See Rule 102)

Manufacturing. Neither of these classifications is applicable, however, if the article sold is delivered to an out-of-city customer at an out-of-city point or if an article is produced for commercial or industrial use (See Rule 134). In these cases tax is due under the manufacturing classification on the ‘value of products’

Revised November 14, 2013
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #134 & #140)

RULE 140

PHOTOFINISHERS AND PHOTOGRAPHERS

Retailing. Gross income derived from sales, delivered in the city, are taxable under the retailing classification.

Wholesaling. Gross income derived from sales to someone other than the consumer, delivered in the city, are taxable under the wholesaling classification.

Manufacturing. Photofinishers who produce negatives, prints, or slides in the city are subject to business and occupation tax under the manufacturing classification upon the value of products (see Rule 112).

Processing for Hire. Photofinishers who develop film for others and who make delivery of the film to points outside the city are subject to business tax under the manufacturing classification upon the total charge for the work done. It is immaterial that the customers are located outside the city or that the film was sent in from outside the city for processing.

Service and Other. Gross income from sales to publishers of newspapers, magazines and other publications for the right to publish photographs is taxable under the service and other classification.

Revised February 11, 2015
Revised August 18, 2014
Revised November 14, 2013
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #135)

RULE 141

DUPLICATING INDUSTRY AND MAILING BUREAUS

The phrase "duplicating industry" includes activities involving photostating, blue-printing, photocopying, color coping, and other reproduction processes.

Mailing bureaus mail material for the publishing industry and also mail folders, bulletins, form letters, advertising publications, flyers, and similar material for other customers. As part of these services, the bureaus also label, fold, enclose and seal.

Retailing.
Duplicating Industry. Gross income received from sales of photostats, blueprints, copies, etc., to consumers, whether the tangible personal property on which the work is recorded is owned by the duplicator or customer.

Mailing Bureaus. Gross income from charges made to consumers whether the charges are itemized or lump sum.

Wholesaling.
Duplicating Industry. Gross income from sales when the buyer purchases the duplicated property for resale without intervening use. Wholesale classification applies to sales for resale in the regular course of the purchaser's business. The duplicator must have resale documentation.

Mailing Bureaus. Gross income from charges, whether the charges are itemized or lump sum, from tangible personal property resold as such to the purchaser or for services rendered to tangible personal property which becomes a component of an article for resale in the regular course of the purchaser's business. In either case, mailing bureaus must have resale documentation.

Neither of these classifications is applicable, however, if the article sold is delivered to an out-of-city customer or if an article is produced for commercial or industrial use (see Rule 134). In these cases, tax is due under the printing industry classification on the "value of products."

Revised February 11, 2015
Revised August 18, 2014
Revised November 14, 2013
Revised January 1. 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #136)

RULE 144

PRINTING INDUSTRY

The word “newspaper” means a publication offered for sale regularly at stated intervals at least once per week and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind. The word does not include racing forms or other similar publications devoted solely to a specialized field. It shall include school newspapers, regardless of the frequency of publication, where such newspapers are distributed regularly to a paid subscription list.

The phrase "printing industry" includes letterpress, offset-lithography, and gravure processes as well as multigraph, mimeograph, autotyping, addressographing and similar activities

Printing and Publishing. Gross income derived from the publishing business including persons who both print and publish books, music circulars etc. and any other items. The income shall be allocated to the principal place in this State from which the taxpayer business is directed or managed.

Retailing. Gross income from sales to consumers of newspaper, magazines, periodicals, and publications.

Sales of magazines and periodicals to the reading public by persons operating newsstands, book stores, cigar stores, drugstores, etc. are retail sales.

The printing or imprinting of advertising circulars, books, briefs, envelopes, folders, posters, racing forms, tickets, and other printed matter, whether upon special order or upon materials furnished either directly or indirectly by the customer is a retail sale, providing the customer either consumes, or distributes such articles free of charge, and does not resell such articles in the regular course of business. The business and occupation tax is computed upon the total charge for printing, and the printer may not deduct the cost of labor, author's alterations, or other service charges in performing the printing, even though such charges may be stated or shown separately on invoices.

Where stamped envelopes or government postals are purchased and printed for customers or where stamps are provided, the amount of the postage may be deducted from the total charge to the customer in determining the selling price for business tax. Sales of printed matter to advertising agencies, who purchase for their own use or for the use of their clients, and not for resale in the regular course of business, are sales for consumption.

Sales of tickets to theater owners, amusement operators, transportation companies and others are sale for consumption. Such tickets are not resold by the theater owners or amusement proprietors as tangible personal property but are used merely as a receipt to the patrons for payment and as evidence of the right to admission or transportation.

Sales of school annuals and similar publications by printers to school districts, private schools or student organizations therein are subject to the retailing tax.

Wholesale. Gross income from sales by printers of books, envelopes, folders, posters, racing forms, stationery, tickets and other printed matter to dealers for resale in the regular course of business.

Sales to newsstands or stores are wholesale sales.

Persons taxable under the retailing or wholesaling classification with respect to selling products in the City shall be allowed a credit under the Multiple Activities Tax Credit against those taxes for any eligible gross receipts taxes paid with respect to the printing, or the printing and publishing of the products sold within the City.

Persons who publish such things and do not print the same, are taxable under the retailing or wholesaling classifications measured by gross sales and taxable under the service and other classification measured by gross income received from advertising.

Magazines and periodicals sold as digital products. Sales of magazines and periodicals that are transferred electronically to the end user are subject to the retailing tax regardless of how they are accessed. For more information on the publication of tax on digital products, refer to TMC 6A.30.030.

Commissions and Discounts. There is a general trade practice in the printing industry of making allowances to advertising agencies of a certain percentage of the gross charge made for printed matter ordered by the agency either in its own name or in the name of the advertiser. This allowance may be a "commission" or may be a "discount."

A ‘commission’ paid by a seller constitutes an expense of doing business and is not deductible from the measure of tax. On the other hand, a "discount" is a deduction from an established selling price allowed to buyers, and a bona fide discount is deductible.

In order that there may be a definite understanding, printers, advertising agencies and advertisers are advised that tax liability in such cases is as follows:

1. The allowance taken by the advertising agency will be deductible as a discount in the computation of the printer's liability only in the event that the printer bills the charge on a net basis; i.e., less the discount.
2. In all cases the commission received is taxable to the agency.

Revised February 11, 2015
Revised August 21, 2014
Revised March 20, 2012
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #138 and #139)

RULE 146

NATIONAL AND STATE BANKS, MUTUAL SAVINGS BANKS, SAVINGS AND LOAN ASSOCIATIONS AND OTHER FINANCIAL INSTITUTIONS

Effective July 1, 1972, the City Council repealed Section 6.68.270(k) TMC which exempted from the business and occupation tax the gross income of national banks, state banks, mutual savings banks, savings and loan associations and certain other financial institutions. Accordingly, the gross income or gross sales of such Institutions became subject to the business and occupation tax according to the following general principles.

"Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

Service & Other Activities. Generally, the gross income from engaging in financial businesses is subject to the business and occupation tax under the classification service and other activities. Following are examples of the types of income taxable under this classification: Interest earned (including interest on loans made to nonresidents unless the financial institution has a business location in the state of the borrower's residence which rendered the banking service), commissions earned, dividends earned, fees and carrying charges, and charges for bookkeeping or data processing.

Retail Services. Gross income received from safety deposit box rentals.

Deductions. The deductions generally applicable to financial businesses include the following:

1. Dividends received by a parent from its subsidiary corporations.
2. Interest received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties. (See Rule 166 for definition of "transient.")
3. Interest received on obligations of the State of Washington, it's political subdivisions, and municipal corporations organized pursuant to the laws thereof. A deduction may also be taken for interest received on direct obligations of the Federal government, but not for interest attributable to loans or other financial obligations on which the Federal government is merely a guarantor of insurer.
4. Proceeds from sales or rentals of real estate. These amounts may be entirely excluded from the income reported and need not be shown on the return as a deduction.

Retailing. Sales of tangible personal property are defined as "retail sales" and are subject to the business and occupation tax under the retailing classification. Following are examples of transactions subject to the retailing classification of the business and occupation tax: sales of meals or confections, sales of repossessed merchandise, sales of promotional material and sales of check registers, coin banks, and personalized checks. (Note: When the financial institution is not the seller of these items but simply takes orders as agent for the supplier, the supplier is responsible for reporting under the retailing classification.)

Revised April 30, 2012
Revised October 7, 2010
Revised January 1, 1984
Adopted January 1, 1976

RULE 148

BARBER AND BEAUTY Salons

Barber and beauty salons are subject to the business and occupation tax as follows:

Retailing. Taxable under the retailing classification upon charges for styling of wigs or hairpieces and upon the gross proceeds of sales of shoe shines and of packaged cosmetics, etc., sold apart from the rendition of personal services.

Service and Other. Taxable under the service and other classification upon the gross income from charges for the rendition of personal services, such as hair cutting, shaving, shampooing, tinting, bleaching, setting and similar activities.

Revised September 8, 2014
Revised April 25, 2012
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #142)

RULE 150

OPTOMETRISTS, OPHTHALMOLOGISTS, AND OCULISTS

"Professional services" include the examination of the human eye, the examination, identification, and treatment of any defects of the human vision system, and the analysis of the process of vision. It includes the use of any diagnostic instruments or devices for the measurement of the powers or range of vision, or the determination of the refractive powers of the eye or its functions. It does not include the preparation or dispensing of lenses or eyeglasses.

"Optical merchandise" includes prescription lenses, frames, springs, temples, cases, and other items or accessories to be worn or used with lenses. It also includes nonprescription lenses or eyeglasses.

"Prescription lens" means any lens, including contact lens, with power or prism correction for human vision, which has been prescribed in writing by a physician or optometrist. The term "prescription lens" includes all ingredients and component parts of the lens itself, including color, scratch resistant or ultraviolet coating, and fashion tints.

Service and Other. Optometrists and ophthalmologists are subject to the Service and Other classification on the gross income from providing professional services.

Retailing. Gross income received from sales of optical merchandise to consumers is subject to the Retailing classification.

Revised August 21, 2014
Revised November 14, 2013
Revised October 7, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #144)

RULE 153

FUNERAL ESTABLISHMENTS

Funeral establishment means a person licensed under RCW 18.39.145. Persons operating cemeteries should refer to Rule154.

Retailing. Gross income from the sales of tangible personal property such as urns, caskets, clothing, outside casket cases, floral arrangements, plants, and acknowledgement cards.

Service and Other. Gross income attributable to funeral services

Reimbursement for accommodation expenditures. Amounts received by a funeral establishment as reimbursement for goods or services provided by persons not employed by, affiliated, or associated with the funeral establishment may be deducted from the measure of the business and occupation tax if these amounts have been reported as gross income on the funeral establishment's tax return. These amounts are deductible if advanced to accommodate the customer and separately itemized on the billing statement or invoice in the exact amount of the expenditure.

Revised September 9, 2014
Revised March 20, 2012
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #147)

RULE 154

CEMETERIES, CREMATORIES, COLUMBARIA

"Cemeteries" includes cemeteries, burial parks, crematories, columbaria, and mausoleums.

Retailing. The gross proceeds derived from the sale of tangible personal property are taxable under the retailing classification.

Service & Other Activities. Income derived from rendition of interment services is taxable under the service & other classification. Sales or transfers of plots, crypts, and niches for interment of human remains, irrespective of whether the document of transfer is called a deed or certificate of ownership, are charges for the right of interment, an interest similar to a license to use real estate, and the entire gross income therefrom is taxable under the service & other classification without any deduction for amounts set aside to funds for perpetual care.

Prearrangement Contract. Funeral establishments often enter into prearrangement contracts requiring them to provide funeral services and merchandise at some future date. Unless otherwise exempt, the law requires funeral establishments to place a portion of the cash purchase price of the contract, excluding retail sales tax, into one or more prearrangement funeral service trusts. Income is taxable upon the withdrawal of trust funds upon fulfillment or cancellation of the contract.

Contract cancellation and trust administration fees. Amounts retained by the funeral establishment when a prearrangement funeral service contract is canceled are subject to the service and other tax, except that any amounts allocable to a retail sale of merchandise are subject to retailing tax. Administration fees deducted from a prearrangement funeral service trust by the administrator are also subject to the service and other activities tax.

Revised May 9, 2015
Revised September 8, 2014
Revised April 23, 2012
Revised January 1, 1984
Revised January 1, 1978
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #148)

RULE 155-A

COMPUTER SYSTEMS AND HARDWARE

“Computer" is an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. Examples of a computer include, but are not limited to, mainframe computer, laptop, workstation, and desktop computer. It may include any hand-held devices, tablets etc. "Computer" also includes automatic data processing equipment, which is a computer used for data processing purposes. "Computer" does not include any peripheral devices.

“Computer system" is a functional unit, consisting of one computer and associated computer software, whereas a computer network is two or more computers and associated computer software that uses common storage. A computer system may or may not include peripheral devices.

"Computer hardware" includes, but is not limited to, the mechanical, magnetic, electronic, or electrical components of a computer system such as towers, motherboards, central processing units (CPU), hard disc drives, memory, as well as internal and external peripheral devices such as compact disk read-only memory (CD-ROM) drives, compact disk rewriteable (CD-RW) drives, zip drives, internal and external modems, wireless fidelity (Wi-Fi) devices, floppy disks, compact disks (CDs), digital versatile disks (DVDs), cables, mice, keyboards, printers, monitors, scanners, web-cameras, speakers, and microphones.

Retailing. Gross income derived from sales of computers, computer systems, and computer hardware to consumers and installing, repairing and maintenance of computer hardware for the consumer is taxable under the retailing classification.

Wholesaling. Gross income derived from sales to persons who resell the equipment and installing, repairing and maintenance of computer hardware for someone other than the consumer are taxable under the wholesaling classification.

Service and Other. Separately stated charges for custom programming installed with the associated computer system software are taxable under the service and other classification.

Manufacturing. Persons engaged in manufacturing computers, computer systems, and computer hardware in Tacoma are subject to taxation under the manufacturing classification upon the value of the products. Manufacturers of computers, computer systems, and computer hardware who sell their products at retail or wholesale are also subject to taxation under either the retailing or wholesaling classifications, as the case may be. In such cases the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) classifications and may claim a multiple activities tax credit (MATC).

Separately stated charges for custom programming involved with the associated computer software are not subject to taxation under the manufacturing classification.

Separately stated charges for computer software sold and installed after the sale of a computer system are not subject to taxation under the manufacturing classification.

The combining of a computer system with certain peripheral devices is considered a packaging activity not subject to taxation under the manufacturing classification, when the following occurs:

- The peripheral devices remain in the original packaging;
- The person does not attach its own label to the peripheral devices;
- The person maintains a separate inventory of the peripheral devices for sale apart from the sale of the computer system; and
- The charge for the sale of peripheral devices is separately stated from the charge for the sale of computer system

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Revised November 17, 2013
Revised October 7, 2010Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #149)

RULE 155.B

COMPUTER SOFTWARE

Automatic data processing equipment. "Automatic data processing equipment" includes computers used for data processing purposes and their peripheral equipment.

Computer software. "Computer software" is a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. All software is classified as either prewritten or custom. "Computer software" includes only those sets of coded instructions intended for use by an end user and specifically excludes retained rights in software and master copies of software. Computer software does not include data. Computer software may be delivered either electronically or by tangible storage media.

Custom software. "Custom software" is software created for a single person. The use of library files in software development does not preclude such software from being characterized as custom software, as long as the software is created for a single person. For purposes of this rule, "library files" are a collection of precompiled and frequently used routines that a software developer can use in developing the software. The nature of custom software does not change when ownership is transferred to a person with no rights retained by the transferor.

Site license of prewritten computer software. "Site license of prewritten computer software" is a license which provides a consumer acquiring prewritten computer software with the right to duplicate prewritten computer software for use on its own computers, based on the number of computers, the number of workers using the computers, or some other criteria. A site license agreement may cover one site or multiple sites of a purchaser.

Service & Other:

(a) Creation of custom software. Gross income received for creating custom software is taxable under the service and other classification.

(b) Duplication of custom software. Duplication of custom software for the same person, or by the same person for its own use, does not change the character of the custom software. Duplication of custom software for the same person, or by the same person for its own use, is not subject to taxation under the manufacturing classification, but is considered to be part of the sale of custom software and subject to taxation under the service and other classification. If a person duplicates custom software for sales to, or use by, another person other than the original purchaser, the software becomes prewritten computer software.

(c) Computer software training. Gross income received for training on the use of custom software is subject to taxation under the service and other classification. Gross income received for training on the use of prewritten computer software is subject to taxation under the service and other classification, if the charge for such training is separately stated from the sale of prewritten computer software. If the charge for

software training is not separately stated from the sale of prewritten computer software, the entire charge is considered to be a sale of prewritten computer software is taxable under the retailing classification.

(d) Licensing computer software - royalties. Income received from charges in the nature of royalties for the licensing of computer software is taxable per Tacoma Municipal Code 6A.30.076 (Assignment of gross income derived from intangibles). In determining royalties, the true object of the transaction is to grant an intangible right to reproduce and distribute copies of computer software for sale. In contrast, the true object of a site license is the sale to an end user of prewritten computer software for use on its computers.

(e) Customizing prewritten computer software. Gross income received for customizing prewritten computer software is taxable under the service and other classification.

When a charge for customization of prewritten computer software is separately stated on an invoice or contract given to the purchaser, such customization is subject to taxation under the service and other classification. If a charge for customization of prewritten computer software is not separately stated from a sale of prewritten computer software, the entire charge is considered to be a sale of prewritten computer software. Customization of prewritten computer software does not include routine installation.

"Routine installation" means the process of loading program files and installation files onto a computer. Routine installation does not include installation of the customized elements of prewritten computer software. When an invoice or contract contains a separately stated charge for routine installation and customization of prewritten computer software, routine installation is subject to taxation under the retailing classification. If a charge for routine installation is not separately stated from customization of prewritten computer software, the predominant nature of the charge determines the business and occupation tax treatment of the charge.

Wholesaling. Gross proceeds from sales of prewritten computer software to persons other than consumers (e.g., sales for resale without intervening use) are subject to taxation under the wholesaling classification, whether or not ownership or title passes to the buyer, and regardless of any express or implied restrictions upon the buyer. The method of delivery of prewritten computer software does not alter the wholesale nature of the transaction, whether it is through tangible storage media or any electronic means.

Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer in determining when and where the sale takes place.

Retailing. Gross proceeds of sales of prewritten computer software to consumers are subject to taxation under the retailing classification, whether or not ownership or title passes to the buyer, and regardless of any express or implied restrictions upon the buyer. The method of delivery of prewritten computer software does not alter the retail

nature of the transaction, whether it is through tangible storage media or any electronic means. Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer in determining when and where the sale takes place.

- Free prewritten software. The use of prewritten computer software is not taxable, if it is provided free of charge, or if it is provided for temporary use in viewing information, or both. This exception from taxation is limited to prewritten computer software provided free of charge or for temporary use in viewing information, such as free promotional software, donated software, free download of software, and software provided in beta testing to a third party free of charge.
- Retail sales of prewritten software under a site license. Gross proceeds of sales of a site license to a consumer are subject to taxation under the retailing classification. Delivery or authorization of additional copies of prewritten computer software will incur additional taxation under the retailing classification, regardless of the method of delivery. If the seller does not deliver any additional copies of the software to the buyer, then the sales occur when the sales agreements are made to purchase the additional copies, and the sales occur where the original copy or copies of prewritten computer software is delivered unless a better method of determining the delivery location can be made. Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer in determining when and where the sale takes place.

Manufacturing. Persons engaged in manufacturing prewritten computer software in the City are subject to taxation under the manufacturing classification upon the value of the products. Manufacturers of prewritten computer software who sell their products at retail or wholesale in the city are also subject to taxation under either the retailing or wholesaling classification, as the case may be. In such cases the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) classifications and may claim a multiple activities tax credit (MATC). See Tacoma Municipal Code 6A.30.070 (Multiple activities tax credits) for detailed information about the MATC. The mere development of the master software program is not a manufacturing activity.

Other Activities: Duplication of prewritten computer software. Duplication of prewritten computer software on tangible media in the City for sales to or use by more than one person is taxable under the manufacturing tax classification upon the value of products which includes both the value of the tangible media and the software.
Duplication of prewritten computer software is a manufacturing activity only if the prewritten computer software is delivered from the seller to the purchaser by means of tangible storage media which is retained by the purchaser.

When a software developer contracts with a third party to duplicate prewritten computer software, the parties must take into account the value of all tangible and intangible materials or ingredients, including the software code, when determining the relative value of all materials or ingredients furnished by each party. If the third party furnishes less than twenty percent of the total value of all materials or ingredients that become a part of the produced product, then the third party is presumed to be a processor for hire and the software developer is presumed to be a manufacturer. (See Rule 136)

Site license of prewritten computer software. A site license provides a consumer acquiring prewritten computer software with the right to duplicate prewritten computer software for use on its own computers, based on the number of computers, the number of workers using the computers, or some other criteria. A site license agreement may cover one site or multiple sites of a purchaser.

Key to activate computer software. A key, or an enabling or activating code, may be required in some instances to activate computer software and put the software into use, and the key may be delivered to a purchaser after the software is already delivered and in possession by the same purchaser. In such instances, the entire sale of computer software occurs when both the key and the software are delivered to the purchaser. The sale takes place where the software is delivered to the purchaser. If the software delivery location is unavailable to the vendor because the software was delivered by a third party, then the sale takes place where the key is delivered. There is no separate sale of the key from the software, regardless of how such sale may be characterized by the vendor or by the purchaser.

Server license and client access license for the server software. The server license, paid for at the time the server is purchased, grants the buyer the right to install the server software on the buyer's computer. The client access license (CAL) grants the buyer the right to access the server software. The client access license is not computer software and is not downloaded into the buyer's computer. Sales of server licenses and client access licenses are treated as part of the sale of the server software, even if the charges are separately stated. The sales take place where the server software is delivered to the buyer.

Other activities associated with computer software.

- Installing or uninstalling computer software. Gross income received for installing or uninstalling custom software is taxable under the service and other classification. Gross proceeds of sales for routine installation or the uninstalling of prewritten computer software are taxable under the retailing classification. Routine installation of prewritten computer software includes charges for labor and services with respect to the installation, such as travel for the routine installation of the software.
- Repairing, altering, or modifying computer software. Repair of prewritten computer software for more than one person may be distributed as a fix or patch by tangible storage media or electronically in the nature of software upgrades

and updates. The sale of prewritten computer software upgrades and updates are a sale of prewritten computer software is taxable under the retailing classification. Alteration or modification of prewritten computer software performed for a specific person is taxable under the service and other classification. Such alteration or modification of prewritten computer software for a specific person constitutes customization of prewritten computer software. Alteration or modification of custom software is taxable under the service and other classification.

- Maintaining computer software. Sales of maintenance or support services relating to custom software or the customized elements of prewritten computer software are taxable under the service and other classification. Such services, including upgrades and updates, are rendered in respect to the custom or customized software and take on the underlying character and taxability of the custom or customized software.

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RULE 155-C

DIGITAL PRODUCTS

The term "digital product" means (1) digital goods (2) digital automated services (3) digital codes and (4) digital services.

Digital goods means sounds, images, data, facts, or information, or any combination thereof, transferred electronically.

Digital goods includes "specified digital products" which means electronically transferred digital audio-visual works, digital audio works, and digital books.

Digital automated services means services transferred electronically that use one or more software applications. It may include one or more software applications either prewritten or custom, as well as components that are similar to stand-alone digital goods. For example, an online information service may contain data, facts, or information, the use of which is facilitated by one or more software applications that provide search capabilities and other functionality. Thus, digital automated services will include software and may include elements similar to stand alone digital goods, which operate together in an integrated fashion to provide an electronically transferred service.

Digital codes are codes that provide a purchaser with the right to obtain one or more digital products. A digital code may be obtained by any means, including e-mail or by tangible means regardless of its designation as song code, video code, book code, or some other term. For example, a digital code includes the sale of an alphanumeric code that, when entered online at a web site, provides the customer with a digital music file for download.

Digital services consist of the installing, repairing, altering, or improving of digital goods for consumers. It also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge of the service is on a per use, per user, per license, subscription, or some other basis.

"Receive" and "receipt" mean taking possession of tangible personal property, making first use of digital automated services or other services, or taking possession or making first use of digital goods or digital codes, whichever comes first. "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

Retailing. Gross proceeds from sales to consumers of digital goods, digital codes and digital automated services are subject to the retailing classification tax. The installing, repairing, altering, or improving of digital goods for consumers are subject to the retailing classification.

Wholesale. Gross proceeds from sales to non-end users of digital goods, digital codes, and digital automated services are subject to the wholesale classification tax. The

installing, repairing, altering, or improving of digital goods, digital codes, and digital automated services for non-end users are also subject to the wholesale classification.

Gross income is measured by the total sale of digital products where the delivery to the buyer occurs. See Tacoma Municipal Code 6B.30.077(C)

Revised May 26, 2016
Revised April 8, 2015
Revised November 21, 2013

RULE 156

ABSTRACT, TITLE INSURANCE AND ESCROW BUSINESSES

The gross receipts of "abstract," "title insurance" and "escrow" businesses include all service charges representing an abstract fee, a charge for a title insurance fee or premium, or an escrow fee or service charge by "escrow agents."

The term "escrow" means any transaction wherein any person or persons, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another person or persons, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition or conditions, when it is then to be delivered by such third person, in compliance with instructions under which he/she is to act, to a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof.

"Escrow agent" means any person engaged in the business of performing for compensation the duties of the third person referred to in the foregoing definition.

Retail Service. Abstract, title insurance and escrow businesses are taxable under the retail service classification on gross receipts from fees or premiums charged to consumers for abstract, title insurance or escrow services.

Service and Other. The gross income from collection contracts which do not involve an escrow as defined above is subject to tax under the service and other classification.

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Revised November 17, 2013
Revised June 1, 2010
Revised January 1, 1984
Revised January 1, 1976
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RULE 158

FLORISTS AND NURSERIES

The word "florist" means a person engaged in the business of selling flowers and ornamental trees, shrubs, or vines from an established business location, or one who peddles the same.

The word "nurseries" means a place where people grow, propagate or produce for sale upon their own lands or upon land in which they have a present right of possession, any flowers, trees, shrubs or vines.

Retailing. Florists and nurseries are taxable under the retailing classification upon gross sales made by them to consumers.

Wholesaling. Florists are taxable under the wholesaling classification upon gross sales for resale of articles which were not produced by them.

Nurseries are exempt from business and occupation tax with respect to sales at wholesale of articles produced by them in this City, but this exemption does not extend to the taking, cultivating, or raising of Christmas trees or timber.

Telegraphic/Electronic Delivery. Where, through the Florist's Telegraphic/Electronic Delivery Association, one florist takes an order pursuant to which they give telegraphic/electronic instructions to a second florist for delivery of flowers, the sending florist is a retailer of flowers. The receiving florist is selling the flowers which they deliver to the sending florist for resale and is thus a wholesaler. Thus:

1. On all orders taken by a Tacoma florist and telegraphed to a second florist, either in Washington or at a point outside the State of Washington the Tacoma florist taking the order would report such sales under the retailing classification.
2. In cases where a Tacoma florist receives telegraphic instructions from a second florist located either within or without Washington for the delivery of flowers, the Tacoma florist receiving the telegraphic instructions is making a sale for resale and would report such sales under the wholesaling classification.

Telephone and Telegraph Charge. The income derived by a florist from telephone and telegraph charges is construed to be an advance for the customer when such charges are paid by the florist and the amount thereof is billed to the customer as a separate item.

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Revised October 8, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #151)

RULE 159

CONSIGNEES, BAILEES, FACTORS, AGENTS AND AUCTIONEERS

A consignee, bailee, factor, agent or auctioneer, as used in this ruling, refers to one who has either actual or constructive possession of tangible personal property, the actual ownership of such property being in another, or one calling for bids on such property. The term "constructive possession" means possession of the power to pass title to tangible personal property of others.

Retailing and Wholesaling. Every consignee, bailee, factor, agent or auctioneer having either actual or constructive possession of tangible personal property, or having possession of the documents of title thereto, with power to sell such tangible personal property in his or its own name actually so selling, shall be deemed the seller of such tangible personal property and taxable under the Retailing or Wholesaling classification of the business and occupation tax, depending upon the nature of the transactions. In such case the consignor, bailor, principal or owner shall be deemed a seller of such property to the consignee, bailee, factor or auctioneer and taxable as a wholesaler with respect to such sales.

The mere fact that consignee, bailee or factor makes a sale raises a presumption that such consignee, bailee or factor actually sold in his or its own name. This presumption is controlling unless rebutted by proof satisfactory to the Tax and License division.

Agents and Brokers. Any person, who claims to be acting merely as agent or broker in promoting sales for a principal or in making purchases for a buyer, will have such claim recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:

1. The books and records of the broker or agent show the name of the actual owner of the property for whom the sale was made, or the actual buyer for whom the purchase was made.
2. The books and records show the amount of gross sales, the amount of commissions and any other incidental income derived by the broker or agent from such sales.

Service and Other Activities - Every consignee, bailee, factor or auctioneer who makes a sale in the name of the actual owner, or as agent of the actual owner or who purchases as agent of the actual buyer, is taxable under the Service and Other Activities classification upon the gross income derived from such business.

Revised September 15, 2014
Revised November 14, 2013
Revised October 8, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #152)

RULE 160

AGRICULTURAL COMMISSION AGENTS

Any person whose business consists of selling agricultural products both as a dealer and on a commission consignment basis is presumed to be conducting business as a seller of tangible personal property either at wholesale or retail, unless such person segregates their books and records between sales of products purchased and sold as a dealer and those handled strictly on a commission basis.

Retailing. Dealers are taxable under the retailing classification on gross proceeds derived from retail sales. Persons selling on a commission consignment basis who do not segregate their books and records between sales made as a dealer and those handled on a commission basis are taxable as sellers on gross proceeds of all sales.

Wholesaling. Dealers are taxable under the wholesaling classification on gross proceeds derived from wholesale sales. Persons selling on a commission consignment basis who do not segregate their books and records between wholesale sales made as a dealer and those handled on a commission basis are taxable as sellers on gross proceeds of all sales.

Service and Other. A person may be classified as engaging in service and other activities with respect to bona fide commission consignment sales, even though such consigned sales are credited to the "sales" account, providing they have complied with the Commission Merchants' Law of the State of Washington and has prepared and kept the following records supplementary to the regular books of account:

1. Lot sheets, cards or similar subsidiary records on which consigned sales are regularly recorded;
2. An analysis sheet showing the date, lot number, gross proceeds of sales of consigned goods, remittances to consignor, advances, commissions, other charges and taxable amount with respect to consigned accounts. This sheet shall contain a complete analysis of all consigned sales showing the distribution made from lot sheets, cards or similar subsidiary records. Entries in the consigned sales analysis record shall be made as of the date that final distribution is made on lot sheet, card or similar record;
3. A detailed record of deductions claimed with respect to sales of products purchased. Such records shall show the date of sale, the lot number and the nature of the deductions claimed.

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Revised April 30, 2012
Revised January 1, 1984
Adopted January 1, 1976

RULE 162

STOCKBROKERS AND SECURITY HOUSES

With respect to stockbrokers and security houses, "gross income of the business" means the total of gross income from interest, gross income from commissions, gross income from trading and gross income from all other services provided that:

1. Gross income from each account is to be computed separately and on a monthly basis;
2. Loss sustained upon any earnings account may not be deducted from or offset against gross income upon any other account, nor may a loss sustained upon any earnings account during any month be deducted from the gross income upon any account for any other month;
3. No deductions are allowed on account of salaries or commissions paid to employees or sales people, rent, or any other overhead or operating expenses paid or incurred, and
4. No deductions are allowed from commissions received from sales of securities which are delivered to buyers outside the City of Tacoma.

Gross Income from Interest. Gross income from interest includes all interest received upon bonds or other securities held for sale or otherwise, excepting only direct obligations of the Federal government and of the State of Washington. No deduction is allowed for interest paid out even though such interest may have been paid to banks, clearing houses or others upon amounts borrowed to carry debit balances of customers' margin accounts.

Interest accrued upon bonds or other securities sold shall be included in gross income where such interest is carried in an interest account and not as part of the selling price. Conversely, interest accrued upon bonds or other securities at the time of purchase may be deducted from gross income where such interest is carried in an interest account and not as a part of the purchase price.

Gross Income from Commissions. Gross income from commissions is the amount received as commissions upon transactions for the accounts of customers over and above the amount paid to other established security houses associated in such transactions; provided, however, that no deduction or offset is allowed on account of salaries or commissions paid to sales people or other employees.

Gross Income from Trading. Gross income from trading is the amount received from the sale of stocks, bonds and other securities over and above the cost or purchase price of such stocks, bonds and other securities. In the case of short sales, gross earnings shall be reported in the month during which the transaction is closed, that is, when the purchase is made to cover such sales or the short sale contract is forfeited.

Gross Income from all Other Services. Gross income from all other services includes all income received by the taxpayer.

Services & Other Apportionment. The gross income from all services provided by stockbrokers and security houses is taxable under the service & other apportionment classification. See Rule 194.

Revised November 18, 2014
Revised October 8, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #153)

RULE 164

INSURANCE PRODUCERS

Insurance producer means a person required to be licensed under the laws of Washington to sell, solicit or negotiate insurance. The term does not include title insurance agents or surplus line brokers pursuant to TMC 6A.30.03, Definitions, Retail Service.

Service & Other. Every person acting in the capacity of insurance producer is presumed to be engaging in business and is taxable under the service and other classification upon the gross income of the business. Gross income includes investment fees and non-insurance commissions.

Exemption. Amounts received from gross premiums where the premium tax is paid to the state pursuant to RCW 48.14.020 is an allowed exemption.

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Revised November 5, 2013
Revised January 1, 1984
Adopted January 1, 1976

RULE 165

LAUNDRY, DRY CLEANING, LINEN AND UNIFORM SUPPLY, AND SELF-SERVICE AND COIN-OPERATED LAUNDRY SERVICES

A "laundry or dry cleaning service" is the activity of laundering, cleaning, drying, and pressing of articles such as clothing, linens, bedding, towels, curtains, drapes, and rugs. It also includes incidental mending or repairing. The term applies to persons operating their own cleaning establishments as well as those contracting with other laundry or dry cleaning services. It also includes pickup and delivery laundry services performed by persons operating in their independent capacity and not as agent for another laundry or dry cleaning service.

"Linen and uniform supply services" means the activity of providing customers with a supply of clean linen, towels, uniforms, gowns, protective apparel, clean room apparel, mats, rugs, and/or similar items whether ownership of the item is with the person operating the linen and uniform supply service or with the customer. It also means the supply of diapers and bedding. "Linen and uniform supply services" includes supply services operating their own cleaning establishments as well as those contracting with other laundry or dry cleaning businesses.

A person providing linen and uniform supply services performs a number of different activities, often at multiple locations. Many of these activities are the same types of activities performed by a person providing laundry or dry cleaning services, such as: laundering, dry cleaning, pressing, incidental mending, and/or pickup and delivery.

Additional activities not generally performed by a person providing laundry or dry cleaning services, but included as linen and uniform supply services are: providing linen and uniform items customized by application of the customer's business name, company logo, employee names, etc.; measuring and/or issuing uniforms to the customer's employees; repairing or replacing worn or damaged linen and uniform items; and/or performing various administrative functions for the customer, such as inventory control.

"Nonprofit health care facilities" means facilities operated by nonprofit organizations providing diagnostic, therapeutic, convalescent, or preventive inpatient or outpatient health care services. The term includes, but is not limited to, nonprofit hospitals, nursing homes, and hospices.

Retailing. The gross proceeds of sale of laundry or dry cleaning services provided to consumers. No deduction is available for commissions allowed or amounts paid to another for the performance of all or part of the laundry or dry cleaning service.

The gross proceeds of sale from linen and uniform supply services provided to consumers. No deduction is available for commissions allowed or amounts paid to another for the performance of all or part of the laundry or dry cleaning service.

The sales of soap, bleach, fabric softener, laundry bags, hangers, and other tangible personal property to consumers.

The gross income received from charges for the use of self-service or coin-operated laundry facilities.

Charges for the use of coin-operated laundry facilities in hotels, motels, trailer camps, and other locations providing lodging or camping facilities to transients.

Wholesaling. The wholesaling tax applies to the gross proceeds of sale from those activities listed above when the purchaser resells the sales or services without intervening use.

Service and Other Activities. Persons who collect and/or distribute laundered or dry cleaned items as an agent for a provider of laundry services, dry cleaning services, or linen and uniform supply services are taxable on their gross commissions.

Charges for the use of coin-operated laundry facilities in apartment houses, rooming houses, or mobile home parks when the facilities were provided for the exclusive use of tenants.

The gross proceeds of sale received for providing laundry services to nonprofit health care facilities.

Place of sale

Laundry and dry cleaning services. For the purposes of determining a seller's responsibility to remit tax, the place of sale for laundry and dry cleaning services is the place the laundering or dry cleaning is performed.

A customer may purchase laundry or dry cleaning services from a seller who hires another person to perform the actual cleaning activity. In such cases, the customer will drop off and pick up the clothing or other articles to be cleaned at the seller's business location. The place of sale with respect to this sale is the seller's location where the customer drops off and picks up the articles.

If a person providing laundry or dry cleaning services uses an agent such as a hotel or a driver for pickup and delivery of the articles to be cleaned, the place of sale is the location where the cleaning is performed.

Linen and uniform supply services. A seller of linen and uniform supply services shall report their sales at the place of delivery to the customer.

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Revised December 2013
Revised October 8, 2010

Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #156)

RULE 166

HOTELS, MOTELS, BOARDING HOUSES, ROOMING HOUSES, RESORTS, SUMMER CAMPS, TRAILER CAMPS, ETC.

A hotel, motel, boarding house, rooming house, apartment hotel, resort lodge, auto or tourist camp, and bunkhouse, as used in this ruling, includes all establishments which are held out to the public as an inn, hotel, public lodging house, or place where sleeping accommodations may be obtained, whether with or without meals or facilities for preparing the same. The foregoing does not include establishments in the business of renting real estate, such as apartments, nor does it include hospitals, nursing homes, rest homes, and similar institutions.

Further, the foregoing includes private lodging houses, dormitories, bunkhouses, etc., operated by or on behalf of business and industrial firms solely for the accommodation of employees of such firms, and which are not held out to the public as a place where sleeping accommodations may be obtained. The term includes guest ranches or summer camps which, in addition to supplying meals and lodging, offer special recreation facilities and instruction in sports, boating, riding, outdoor living, etc. In some cases these businesses may not be making retail sales of lodging, as discussed below.

A boarding house is an establishment selling meals on the average to five or more persons, exclusive of members of the immediate family. Where meals are furnished to less than five persons, exclusive of members of the immediate family, the establishment will not be considered as engaging in the business of operating a boarding house.

A trailer camp is an establishment making a charge for the rental of space to transients for locating or parking house trailers, campers, mobile homes, tents and the like which provide sleeping or living accommodations for the occupants. Additional charges for utility services will be deemed part of the charge made for the rental.
It will be presumed that the above establishments are conferring a license to use real estate, as distinguished from a rental of real estate, where the occupant is a transient.

Conversely, where the occupant who receives lodging is or has become a nontransient, it will be conclusively presumed that the occupancy is under a rental or lease of real property.

Where lodging is furnished a transient, as that term is hereinafter defined, the charge therefore is subject to the business and occupation tax under the retailing classification. Where the lodging is furnished a nontransient, the transaction is deemed a rental of real estate and is exempt from tax.

The term "transient" 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 and who does not continuously occupy the premises for a period of one month. Where such occupant remains in continuous occupancy for more than one month, they shall be deemed a transient as to their first month of occupancy, unless they have contracted in

advance to remain one month. In cases where such person has contracted in advance and does so remain in continuous occupancy for one month, they will be deemed a nontransient from the start of the occupancy.

The tax liability of hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc., is as follows:

Retailing. Rental of rooms for lodging; rental of rooms, space, and facilities not for lodging, such as ballrooms, display rooms, meeting rooms, etc.; and the sale of tangible personal property to the consumer.

Service Retail. Automobile parking or storage and rental of tangible personal property.

Service and Other Activities. Commissions, amounts derived from accommodations not available to the public, and certain unsegregated charges.
Hotels, motels, and similar businesses may receive commissions from various sources which are generally taxable under the service and other business activities classification. The following are examples of such commissions:

- Commissions received from acting as a laundry agent for guests when someone other than the hotel provides the laundry service. See WAC 458-20-165 and Rule165.
- Commissions received from telephone companies for long distance telephone calls where the hotel or motel is merely acting as an agent (WAC 458-20-159, Consignees, bailees, factors, agents and auctioneers) and commissions received from coin-operated telephones (WAC 458-20-245, Telephone business, telephone service).
- Commissions or license fees for permitting a satellite antenna to be installed on the premises or as a commission for permitting a broadcaster or cable operator to make sales to the guest of the hotel or motel.
- Commissions from the rental of videos for use by guests of the hotel or motel when the hotel or motel operator is clearly making such sales as an agent for a seller.
- Commissions received from the operation of amusement devices.
-

Amounts derived from the rental of sleeping accommodations by private lodging houses, and by dormitories, bunkhouses, etc., operated by or on behalf of business and industrial firms and which are not held out to the public as a place where sleeping accommodations may be obtained.

An unsegregated charge for meals, lodging, instruction and the use of recreational facilities by summer camps, guest ranches and similar establishments.

Deposits retained by the business as a penalty charged to a customer for failure to timely cancel a reservation.

Revised September 8, 2014
Revised November 19, 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #157)

RULE 167

EDUCATIONAL INSTITUTIONS, SCHOOL DISTRICTS, STUDENT ORGANIZATIONS, PRIVATE SCHOOLS

As used herein: an "educational institution" means only those institutions defined as such in Rule 114; the term "private school" means all schools which are excluded from said definition.

Departments and institutions of the state of Washington are not subject to the business and occupation tax. School districts are also not subject to the business and occupation tax.

Private schools, student organizations, school districts engaging in utility or enterprise activities, and educational institutions which are not departments or institutions of the state of Washington are subject to the business and occupation tax as follows:

Service and Other. The service business and occupation tax applies to the following nonexclusive list of activities or sources of income:

1. Tuition fees received by private schools. However, educational institutions, as defined in Rule 114, may deduct amounts derived from tuition fees.
2. Rental by private schools of dormitories or other student lodging facilities which are not generally available to the public and where the student does not have an absolute right of control and occupancy. (See Rule 118.) However, educational institutions may deduct the income from charges for lodging made to students. These amounts are defined by law as being tuition.
3. Amounts received by private schools for providing meals to students where the meals are provided exclusively for students, teachers, staff, and their guests. However, refer to the comments under retailing for the taxability of meals sold to guests of students. Income from providing meals to students by educational institutions is deductible.

Retailing. The retailing business and occupation tax applies to the following nonexclusive list of activities or sources of income:

1. Sales of articles of tangible personal property sold by them.
2. Sales of meals to guests of students.
3. Sales of meals or prepared foods in facilities which are generally open to the public, including those sold to students when the charge therefore is specified and is not included within the charge made for tuition.
4. Rental of conference facilities to various organizations or groups.

Educational institutions, school districts and student organizations are not subject to the business and occupation tax with respect to activities directly connected with the educational program, such as operation of a common dining room, sale of lab supplies, etc.

Revised September 9, 2014
Revised September 4, 2013
Revised April 29, 2012
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #158)

RULE 168

HOSPITALS

The term "hospital" means only institutions defined as hospitals in RCW Chapter 70.41. The term "nursing home" means only institutions defined as nursing homes in Chapter RCW Chapter 81.51.

The gross income of hospitals for medical services is taxable under the service and other activities classification.

The gross income of nursing homes, convalescent homes, clinics, rest homes, health resorts and similar institutions for personal or professional services is taxable under the service and other activities classification.

The gross income received from sales of drugs, medicines, eye glasses, lenses, devices, orthopedic appliances, and similar articles, when billed and accounted for separately from hospital services rendered is taxable under the retailing classification. For the taxation from the sales of meals please see Rule 119.

In computing business tax liability of hospitals or other healthcare organizations, there may be deducted from the measure of the tax the following:

1. Amounts derived as compensation for services rendered or to be rendered to patients by a hospital as defined in RCW Chapter 70.41when such hospital is operated by the United States of America or any of its instrumentalities or by the State of Washington or any of its political subdivisions.
2. Amounts derived from bona fide contributions, donations and endowment funds when received by a 501(c)3 organization (see Rule 114).
3. Amounts derived from non-profit hospitals or other healthcare organizations with annual gross income, minus any allowed deductions or exemptions as provided in TMC 6A.30, less than $30,000,000 for any calendar year.

Revised November 20, 2015
Revised September 9, 2014
Revised August 20, 2013
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #159)

RULE 169

RELIGIOUS, CHARITABLE, BENEVOLENT, NONPROFIT SERVICE ORGANIZATIONS, AND SHELTERED WORKSHOPS

Religious, charitable, benevolent, and nonprofit service organizations are subject to the excise taxes imposed by the Tacoma Municipal Code with the following exceptions only:

Religious, charitable, benevolent, and nonprofit service organizations serving meals for fund raising purposes are not engaged in the business of making sales at retail and are not required to pay the business and occupation tax, unless such meals are served more frequently than once every two weeks. Religious, charitable, benevolent, and nonprofit service organizations conducting bazaars or rummage sales are not engaged in the business of making sales at retail and are not required to pay the business and occupation tax where such bazaars or rummage sales are conducted intermittently and do not extend over a period of more than three consecutive days.

Sheltered Workshops. The gross income received by nonprofit organizations from the operation of "sheltered workshops" is subject to the business and occupation tax.

"Sheltered workshops" is defined by the law to mean, “rehabilitation facilities, or that part of rehabilitation facilities, where any manufacture or handiwork is carried on and which is operated for the primary purpose of (1) providing gainful employment or rehabilitation services to the handicapped as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist; or (2) providing evaluation and work adjustment services for disabled individuals."

Revised September 9, 2014
Revised July 18, 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #160)

RULE 170

CONSTRUCTING AND REPAIRING OF NEW OR EXISTING BUILDINGS OR OTHER STRUCTURES UPON REAL ESTATE

The term "prime contractor" means a person engaged in the business of performing for consumers, contracts for the constructing, repairing, decorating or improving of new or existing buildings or other structures under, upon or above real property, either for the entire work or for a specific portion thereof.

The word "subcontractor" means a person engaged in the business of performing a similar service for persons other than consumers, either for the entire work or for a specific portion thereof.

The term "buildings or other structures" means anything artificially built up or composed of parts joined together in some definite manner and attached to real property. It includes not only buildings in the general manner and ordinary sense, but also tanks, fences, conduits, culverts, railroad tracks, tunnels, overhead and underground transmission systems, monuments, retaining walls, piling and privately owned bridges, trestles, parking lots, and pavements for foot or vehicular traffic, etc.

The term "constructing, repairing, decorating or improving of new or existing buildings or other structures," in addition to its ordinary meaning, includes the installing or attaching of any article or tangible personal property in or to real property, whether or not such personal property becomes a part of the realty by virtue of installation, the construction of streets, roads, highways, etc., owned by the state of Washington, and also includes the clearing of land and the moving of earth.

Speculative Builders. As used herein the term "speculative builder" means one who constructs buildings for sale or rental upon real estate owned by him or her, and the terms "sells" or "contracts to sell" include any agreement whereby an immediate right to possession or title to the property vests in the purchaser.

Amounts derived from the sale of real estate are exempt from the business and occupation tax. Consequently, the proceeds of sales by speculative builders of completed buildings are not subject to such tax.

However, when a speculative builder sells or contracts to sell property upon which he or she is presently constructing a building, all construction done subsequent to the date of such sale or contract constitutes a retail sale and that portion of the sales price allocable to construction done after the agreement shall be taxed accordingly. Consequently the builder must pay business and occupation tax under the retailing classification on that part of the sale price attributable to construction done subsequent to the agreement.

Prime contractors are taxable under the retailing classification, and subcontractors under the wholesaling classification upon the gross contract price.

Revised July 18, 2013
Revised November 23, 2010
Revised January 1, 1984
Adopted January 1, 1976

RULE 171

BUILDING, REPAIRING OR IMPROVING STREETS, ROADS, ETC., WHICH ARE OWNED BY A MUNICIPAL CORPORATION OR POLITICAL SUBDIVISION OF THE STATE OR BY THE UNITED STATES AND WHICH ARE USED PRIMARILY FOR FOOT OR VEHICULAR TRAFFIC

As used herein: The word "contractor" means a person engaged in the business of building, repairing or improving any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state, the State of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic, either as a prime contractor or as a subcontractor. It does not include persons who merely sell or deliver road materials to such contractors or to the public authority whose property is being improved.

The term "street, place, road, highway, etc." is used in the ordinary sense that the combination of such words implies. It includes docks used primarily by ferry boats operated in connection with a street, road or highway, but does not include railroads, wharves, moorings, hallways, catwalks, or runways, aprons, or taxiways for the landing, take-off or movement of airplanes within airports or landing fields; nor does it include ferry boats, even though the ferry is operated in connection with a street, road or highway. It includes roads and walks which are not open to the public generally, but which may be restricted to use by the military or by employees of a department or instrumentality of the United States.

The word "place" means only an area similar to a street or pedestrian walk, such as thoroughfares in various cities designated "places" for the purpose of preserving the continuity of street names or house numbers; generally, a street of shorter length than others.

The term "building, repairing or improving of a publicly owned street, place, road, etc.," includes clearing, grading, graveling, oiling, paving and the cleaning thereof; the constructing of tunnels, guard rails, fences, walks and drainage facilities, the planting of trees, shrubs and flowers therein, the placing of street and road signs, the striping of roadways, and the painting of bridges and trestles; it also includes the mining, sorting, crushing, screening, washing and hauling of sand, gravel, and rock taken from a public pit or quarry. It also includes the constructing of road and street lighting systems, even though portions of such systems also are used for purposes other than street and road lighting; also the constructing of a drainage system in streets and roads, even though such system is also used for the carrying of sewage: PROVIDED, that the drainage facilities are sufficient for disposal of the normal runoff of surface waters from the particular streets and roads in which the system is constructed or an ordinance authorizing the construction of a combined sewer system is incorporated by reference in the contract and the contract or specifications clearly indicate that the system is designed and intended for the disposal of the normal runoff of surface waters from the streets and roads in which the system is constructed.

The term includes any contract for the readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of building, repairing or improving a street, place, road, etc., which is owned by a municipal corporation or political subdivision of the state or by the United States, the cost of which readjustment, reconstruction, or relocation is the responsibility of the public authority whose street, place, road, etc., is being built, repaired or improved. It also includes building or repairing mass transportation facilities owned by a municipal corporation or political subdivision of the state or by the United States.

Except as provided above, the term does not include the constructing of water mains, telephone, telegraph, electrical power, or other conduits or lines in or above streets or roads, unless such power lines become a part of a street or road lighting system as aforesaid; nor does it include the constructing of sewage disposal facilities, nor the installing of sewer pipes for sanitation, unless the installation thereof is within, and a part of, a street or road drainage system.

Such contractors are taxable under the public road construction classification upon their total contract price.

The business and occupation tax does not apply to the cost of or charge made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or city and such sand, gravel or rock is

a. stockpiled in said pit or quarry for placement on the street, road, or highway by the county or city itself using its own employees, or
b. placed on the street, road, or highway by the county or city itself using its own employees, or
c. sold by the county or city at actual cost to another county or city for road use.

Sales to such contractors of all materials including prefabricated and precast items, equipment, and supplies used or consumed in the performance of such contracts are sales at retail.

Revised September 9, 2014
Revised November 23, 2010
Revised October 10, 2008
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #162)

RULE 175

PERSONS ENGAGED IN THE BUSINESS OF OPERATING AS A PRIVATE OR COMMON CARRIER BY AIR, RAIL OR WATER IN INTERSTATE OR FOREIGN COMMERCE

“Private carrier" means every carrier, other than a common carrier, engaged in the business of transporting persons or property for hire.

“Watercraft" includes every type of floating equipment which is designed for the purpose of carrying therein or therewith persons or cargo. It includes tow boats, but it does not include floating dry docks, dredges or pile drivers, or any other similar equipment.

“Carrier property" means airplanes, locomotives, railroad cars or watercraft, and component parts of the same.

“Component part" includes all tangible personal property which is attached to and a part of carrier property. It also includes spare parts which are designed for ultimate attachment to carrier property. The said term does not include furnishings of any kind which are not attached to the carrier property nor does it include consumable supplies.

For example, it does not include, among other things, bedding, linen, table or kitchen ware, tables, chairs, ice for icing perishables or refrigerator cars or cooling systems, fuel or lubricants.

Persons engaged in such businesses are not subject to business and occupation tax with respect to operating income received for transporting persons or property in interstate or foreign commerce. See Rule 193.

Retailing. Such persons are taxable under the retailing tax classification upon the gross proceeds of sales of tangible personal property, including sales of meals, when such sales are made within this city.
Persons selling tangible personal property to, or performing services for, others engaged in such businesses, are taxable to the same extent as they are taxable with respect to sales of property or services made to other persons in this city.

Revised August 5, 2013
Revised November 23, 2010
Revised January 1, 1984
Adopted January 1, 1976

RULE 176

PERSONS ENGAGED IN THE BUSINESS OF COMMERCIAL DEEP SEA FISHING OPERATIONS OUTSIDE THE TERRITORIAL WATERS OF WASHINGTON

The terms "such persons" and "such businesses" mean the persons and businesses described in the title of this rule.

The terms do not include sport fishermen nor persons operating charter boats for sport fishing. Nor do the terms include the operation or purchase of watercraft for kelping, purse seining, or gill netting, because such fishing methods can be legally performed in Washington only within the territorial waters of the state (the three-mile limit). Therefore, watercraft rigged for fishing by any of these methods will be deemed for use in other than commercial deep sea fishing unless proof, including documentation to be retained by sellers, is furnished that said watercraft will be used for these purposes exclusively outside the Washington territorial limit.

The term "watercraft" means every type of floating equipment which is designed for the purpose of carrying therein or therewith fishing gear, fish catch or fishing crews, and used primarily in commercial deep sea fishing operations outside the territorial waters of the State of Washington.

The term "component part" includes all tangible personal property which is attached to and a part of a watercraft. It includes dories, gurdies and accessories, bait tanks, baiting tables and turntables. It also includes spare parts which are designed for ultimate attachment to watercraft. The said term does not include equipment or furnishings of any kind which are not attached to a watercraft, nor does it include consumable supplies. Thus it does not include, among other things, bedding, table and kitchen wares, fishing nets, hooks, lines, floats, hand tools, ice, fuel or lubricants.

Such persons are not taxable under the extracting classification with respect to catches obtained outside the territorial waters of this state.

Such persons are taxable under either the retailing or the wholesaling classification with respect to sales made within this city, unless entitled to exemption by reason of the commerce clauses of the federal constitution.

Revised August 23, 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #167)

RULE 180

MOTOR TRANSPORTATION, TRUCKING

Agent. A person performing motor transportation service for another motor carrier under the other carrier's direction pursuant to a preexisting agreement which provides for a continuing relationship, precluding the exercise of discretion on the part of the agent in allocating traffic between the carrier and others. Agents may operate under their own operating authority or the operating authority of their principal.

Ancillary Activities. Activities conducted by the motor carrier that are not part of the contracted transportation charge, and include, but are not limited to, stevedoring, separately invoiced charges for loading, unloading, sorting, storage, and consolidation charges. If the contract between the shipper and motor carrier includes the requirement that the motor carrier pack, load, and store the property in addition to the transportation then those activities will be included as part of the motor transportation revenue, provided that any storage over one month will be deemed to be an ancillary activity charge whether or not the storage is part of the contract or invoiced separately.

Broker. A person who sells, provides for, or arranges transportation by a motor carrier for compensation. A freight broker acts as a middle person in bringing a shipper and motor carrier together, for which they earn a commission or mark-up between the amount billed to the shipper and the amount paid to the motor carrier. A broker is not licensed to operate as a motor carrier. A broker does not generally transport or contractually incur the obligation to transport property themselves. However, a person who acts as a broker and also acts as a motor carrier must segregate these activities on their books of record and tax returns.

Freight Forwarder. A person providing transportation of property on a for-hire basis and in the ordinary course of its business:

a. Assembles and consolidates shipments or provides for break-bulk and distribution operations of the shipments;
b. Assumes responsibility for the transportation from the place of receipt to the place of destination; and
c. Uses motor carriers for any part of the transportation services.

Motor Transportation. Means the business of operating any motor propelled vehicle transporting persons or property of others for hire, and includes, but is not limited to the operation of any motor propelled vehicle as an auto transportation company, common carrier or contract carrier.

It includes the business of hauling for hire any extracted or manufactured material, over the highways of the state and over private roads but does not include the transportation of logs or other forest products exclusively upon private roads.
It does not include the hauling of any earth or other substance excavated or extracted from or taken to the right of way of a publicly owned street, place, road or highway, by a

person taxable under the classification of Public Road Construction of the business and occupation tax. (See Rule 171)

Picking up. Means taking the first initial possession of freight or property by the motor carrier. Transfers between agents, motor carriers, or freight forwarders constitutes a "pick up," whereas transfers between transportation equipment owned by the same motor carrier does not constitute a "pick up". Generally, "picking up" is the beginning of the transportation for that particular motor carrier. A motor carrier contracting with another as a subcontractor is "picking up" when it first takes possession of the freight or property.

Service and Other Activities. Persons engaged in business as motor carriers are taxable under the Service and Other Activities classification upon gross income received based on one of the three reporting methods described below.

Motor carriers are mandated by state law to apportion income as stated in RCW 35.21.840. However, due to the complex and unique operations of the motor carrier industry the city and the trucking association leaders have agreed to allow three options to allocate income earned by motor carriers. The three options are as follows: RCW 35.21.840, the pickup rule (Seattle Business Tax Rule 5-481), or the standard two factor apportionment.

RCW 35.21.840. The city shall not be entitled to an allocation of the gross receipts of a motor carrier on account of the use of its streets or highways when no pick-up or delivery occurs therein.

The gross receipts of a motor carrier derived within a city, where it solicits orders and engages in business activities that are a significant factor in holding the market but where it maintains no office or terminal shall be allocated equally between the city providing the local market and the city where the motor carrier's office or terminal is located. Where no such local solicitation and business activity occurs, all the gross receipts shall be allocated to the city where the office or terminal is located irrespective of the place of pick-up or delivery. The word "terminal" means a location at which any three of the following four occur: Dispatching takes place, from which trucks operate or are serviced, personnel report and receive assignments, and orders are regularly received from the public.

The gross receipts of a motor carrier that are not attributable to transportation services, such as investment income, truck repair, and rental of equipment, shall be allocated to the office or terminal conducting such activities.

The gross receipts of a motor carrier with an office or terminal in two or more cities in this state shall be allocated to the office or terminal at which the transportation services commenced.

The Pickup Rule. The gross income of such person that is subject to tax shall be the gross income received from the transport of freight picked up in the City of Tacoma, regardless of where the business was solicited, and regardless of whether the person has an office, terminal or place of business within the City.

Two Factor Apportionment. The two factor apportionment will allocate income between cities based on two factors one being the payroll factor and the other is the receipts factor. For detail on the two factor apportionment please review Tacoma Municipal Code Title 6A.30.077.

Deductions

Interstate Trucking. A deduction is allowed in the amount of the gross income received by a motor carrier from the transportation of property picked up within the City of Tacoma and delivered by the motor carrier to a point outside the State of Washington. A motor carrier that does not transport the property across the state boundary is not entitled to a deduction, even though the freight is destined for, and is ultimately transported, outside Washington. The contract maintained by the motor carrier shall determine whether the haul is deductible. Such contract may be with a shipper, carrier, consolidator, logistics firm, or any other person or party, provided that the motor carrier is required to transport the freight to a location outside the state.

Freight forwarders, agents, and owner- operators are eligible for this deduction where the requirements of this section are met. The fact that the goods themselves are being transported under an interstate "through bill of lading" will not suffice as proof that the carrier was responsible to transport the goods across Washington State boundaries.

Revised June 22, 2016
Revised September 9, 2014
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1982
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #169)

RULE 181

VESSELS, INCLUDING LOG PATROLS, TUGS AND BARGES, OPERATING UPON WATERS IN THE STATE OF WASHINGTON

Retailing. Persons engaged in the business of operating such vessels and tugs are taxable under the retailing classification upon the gross sales of meals (including meals to employees) and other sales of tangible personal property.

Service and Other Activities. The business of operating tugs, barges, vessels and lighters is taxable under the service and other activities classification upon the gross income from such service.

For tax reporting periods beginning January 1, 2008, gross income, shall be allocated and apportioned in accordance with Tacoma Municipal Code 6A.30.077.

Revised December 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #170)

RULE 182

WAREHOUSES

“Warehouse" means every structure wherein facilities are offered for the storage of tangible personal property.

"Storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW (which are agricultural commodities warehouses), public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini-storage" facilities whereby customers have direct access to individual storage areas by separate access.

"Cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing. This term does not include freezer space or frozen food lockers.

"Automobile storage garage" means any off-street building, structure, or area where vehicles are parked or stored, for any period of time, for a charge

The gross income of the business of operating a warehouse includes all income from the storing, handling, sorting, weighing, measuring and loading or unloading for storage of tangible personal property.

Where a grain warehouseman purchases or owns grain stored in such warehouse, there shall be included in gross operating revenue (a) an amount equal to the charges at the customary rate for all services rendered in connection with such grains up to the time of purchase by the warehouseman, and (b) the amount of any charges for services that are rendered during the period of the warehouseman's ownership thereof billed and stated, as such, separately from the price of the grains on the invoice to the purchaser at the time of the sale by the warehouseman.

Persons engaged in the business of operating warehouses, storage warehouses, cold storage warehouses, or any other type of warehouse, are taxable under the Service and Other Activities classification upon gross income received from such business, with the exception of persons engaged in the business of operating automobile storage garage are taxable under the Retail Services classification.

Revised September 4, 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976, Adopted January 1, 1966 (Old Rule #171)

RULE 187

COIN OPERATED VENDING MACHINES, AMUSEMENT DEVICES AND SERVICE MACHINES

"Vending machines" means machines which, through the insertion of a coin will return to the patron a predetermined specific article of merchandise or provide facilities for installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers. It includes machines which vend photographs, toilet articles, cigarettes and confections.

"Amusement devices" means those devices and machines which, through the insertion of a coin or plug purchased from the location, will permit the patron to play a game. It includes slot and pinball machines and those machines or devices which permit the patron to see, hear or read something of interest.

"Service machines" means any coin operated machines other than those defined as "vending machines" or "amusement devices". It includes, for example, scales and luggage lockers, but does not include coin operated machines used in the conduct of a public utility business, such as telephones and gas meters.

Retailing. Gross income received from vending machine operations, sales of vending machines, and service machines and amusement devices to persons who will operate.

Service and Other Activities. Gross income received from amusement device and service machine operations.

Compensation received by the person operating or owning the location when they have granted a license to use real property to the person who owns the machines.

Where the owner of amusement devices which are placed at the location of another has failed to pay the gross receipts tax due, the Department may proceed directly against the operator of the location for full payment of all tax due.

Revised November 21, 2013
Revised January 1. 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #173)

RULE 188

PRESCRIPTION DRUGS

The business and occupation tax applies to all sales of drugs, medicines, prescription lenses, or other substances used for diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans.

Sales of these items to persons for resale are taxable under the wholesaling classification. Sales to consumers are taxable under the retailing classification.

Persons who provide medical services to patients are taxable under the service and other business activities classification on the gross charge to the patient, notwithstanding that some prescription drugs may be separately charged to the patient.

Revised September 3, 2013
Revised November 23, 2010
Revised January 1, 1984
Adopted January 1, 1976

RULE 189

SALES TO AND BY FEDERAL, STATE, AND LOCAL GOVERNMENTS

In computing business tax liability, no deduction is allowed for business transactions with the United States, its departments, institutions or instrumentalities, or for transactions with State of Washington, its departments and institutions, counties, cities, school districts, or any other municipal subdivisions.

The United States and its departments, institutions and instrumentalities, including corporate instrumentalities, are not subject to tax under TMC 6.68.270(h).
No deduction from value of products, gross sales or gross income is allowed for transactions with the United States, its departments, institutions or instrumentalities.

Revised July 17, 2014
Revised September 3, 2013 (Combined with old rule 190)
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #174)

RULE 191

FEDERAL RESERVATIONS

The City of Tacoma has jurisdiction and authority to levy and collect taxes under the provisions of the Tacoma Municipal Code, as amended, upon persons residing within, or with respect to business transactions conducted upon Federal reservations: provided, however, that no tax may be levied upon or collected from the United States, its departments, institutions and instrumentalities or from any authorized purchaser therefrom. (See Rule 189)

A concessionaire, operating within a Federal area under a grant or permit issued by the United States or by a department or instrumentality thereof, is not exempt from city business & occupation taxes, and is taxable to the same extent as any private operator engaging in a similar business outside a Federal area and without specific authority from the United States.

The term "Federal reservation," as used herein, means any land or premises within the exterior boundaries of the City of Tacoma which are held or acquired by and for use of the United States, its departments, institutions and instrumentalities.

Retailing and Wholesaling. Persons making retail or wholesale sales to persons residing within or conducting business upon Federal reservations are taxable upon gross proceeds of sales under the retailing or wholesaling classification. With respect to the tax liability of sales to the United States, its departments, institutions or instrumentalities under these classifications, see Rule 189.

Service and Other Activities. Persons performing services within Federal reservations are taxable under the service and other activities classification upon the gross income derived therefrom, irrespective of the fact that such services are rendered for the United States, its departments, institutions or instrumentalities, or for military personnel.

Revised August 19, 2014
Revised November 26, 2013
Revised November 23, 2010
Revised January 1, 1984
Adopted January 1, 1976

RULE 192

TAX LIABILITY OF INDIANS

"Indian" means a person on the tribal rolls of an Indian tribe. A person on the tribal rolls is also known as an "enrolled member" or a "member" or an "enrolled person" or an "enrollee" or a "tribal member."

"Indian country" has the same meaning as given in 18 U.S.C. 1151 and means:

- All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation;
- All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and
- All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

"Indian tribe" means an Indian nation, tribe, band, community, or other entity recognized as an "Indian tribe" by the United States Department of the Interior. The phrase "federally recognized Indian tribe" and the term "tribe" has the same meaning as "Indian tribe."

"Indian reservation" means all lands, notwithstanding the issuance of any patent, within the exterior boundaries of areas set aside by the United States for the use and occupancy of Indian tribes by treaty, law, or executive order and that are areas currently recognized as "Indian reservations" by the United States Department of the Interior. The term includes lands within the exterior boundaries of the reservation owned by non-Indians as well as land owned by Indians and Indian tribes and it includes any land that has been designated "reservation" by federal act.

The following Washington reservations are the only "Indian reservations" currently recognized as such by the United States Department of Interior: Chehalis, Colville Confederated, Cowlitz, Hoh, Jamestown, Kalispell, Lower Elwha Klallam, Lummi Nation, Makah, Muckleshoot, Nisqually, Nooksack, Port Gamble S'Klallam, Puyallup, Quileute, Quinault Nation, Samish Nation, Shoalwater Bay, Sauk-Suiatte, S'Klallam Skokomish, Snoqualmie, Spokane, Squaxin Island, Suquamish, Swinomish, Tulalip, Upper Skagit, and Yakima Nation.

"Nonmember" means a person not on the tribal rolls of the Indian tribe.

Businesses conducted by an Indian tribe or by members of an Indian tribe on an Indian reservation are not subject to the City's business and occupation tax. Business conducted off of an Indian reservation by an Indian tribe or by members of an Indian tribe are subject to business and occupation taxes.

Nonmembers conducting business on an Indian reservation are taxable unless the following criteria are met:

- The business is selling tangible personal property to an Indian tribe or tribal members and the property is delivered to the buyer on an Indian reservation; or

- The business is performing services for an Indian tribe or tribal members on an Indian reservation.

Revised August 19, 2014
Revised December 3, 2013
Revised November 23, 2010
Revised June 13, 1988
Revised January 1, 1984
Adopted January 1, 1976

RULE 193A

Intrastate, interstate and foreign selling activity. inbound and outbound sales of tangible personal property from or to persons outside the city of tacoma including those persons in other states or foreign countries.

This rule explains the application of Tacoma's Business and Occupation tax to intrastate, interstate and international sales of tangible personal property. It covers both outbound sales of tangible personal property from Tacoma to persons outside the city and inbound sales of tangible personal property from outside the city to persons in Tacoma. This rule also explains how drop shipments are taxed.

History of taxation. Beginning January 1, 2008, tangible personal property sales made from a Tacoma business location and delivered to, and accepted by, a customer at a location outside Tacoma, but within Washington may be deductible from the gross receipts. (See TMC 6A.30.100.L) Such sales must be documented similarly to the interstate sales as required in the sections below. Before January 1, 2008, sales of tangible personal property delivered to customers within Washington were subject to Tacoma's business & occupation tax, unless the sales were subjected to tax under another city's eligible gross receipts tax when delivered within that city.

Nexus. Nexus is that minimum level of business activity or connection with the City of Tacoma, or within the city of Tacoma, that subjects the seller to the taxing jurisdiction of Tacoma. See TMC 6A.30.030 for definition of engaging in business activities (nexus creating activities).

Examples of Nexus creating activities.
Physical Presence. A person is physically present in Tacoma if:

1. The person has property located in Tacoma;
2. The person has one or more employees in the city; or
3. The person, either directly or through an agent or other representative, engages in activities in Tacoma that are significantly associated with the person's ability to establish or maintain a market for its products.

Property. A person has property in Tacoma if the person owns, leases, or otherwise has a legal or beneficial interest in real or personal property in Tacoma.

Employees. A person employed for wages or salary in the city.

Agent or other representative defined. An employee, independent contractor, commissioned sales representative, or other person acting either at the direction or on behalf of another.

Sourcing Intrastate, Interstate and Foreign sales – in general. In general, for inbound sales, Tacoma imposes its business and occupation tax on intrastate and interstate sales of tangible personal property if the property is delivered to the buyer or the buyer's representative in Tacoma and the seller has nexus with Tacoma. For outbound sales Tacoma imposes its business and occupation tax only on sales delivered within Tacoma.

Delivery defined. Delivery is the transfer of possession of tangible personal property between the seller and the buyer or the buyer's representative. Delivery to an employee of a buyer is considered delivery to the buyer.

Transfer of possession defined. Transfer of possession of tangible personal property occurs when the buyer or the buyer's representative first takes physical control of the property or exercises dominion and control over the property.

Dominion and control defined. Dominion and control means the buyer has the ability to put the property to the buyer's own purposes. It means the buyer or the buyer's representative has made the final decision to accept or reject the property and the seller has no further right to possession of the property and the buyer has no right to return the property to the seller, other than under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for the shipment of the property from the seller to itself.

Buyer's representative defined. A buyer's representative is a person, other than an employee of the buyer, who is authorized in writing by the buyer to receive tangible personal property and take dominion and control by making the final decision to accept or reject the property. Neither a shipping company nor a seller can serve as a buyer's representative.

Determination of delivery location. In determining where delivery occurs, it is immaterial where the contract of sale is negotiated or where the buyer obtains title to the property.

Examples.

1. Company A is located in Tacoma. It sells machine parts at retail and wholesale. Company B is located in California and buys machine parts from Company A. Company A carries the parts to California in its own vehicle to deliver them to Company B. The sale is not subject to tax in Tacoma because the parts were not delivered to the buyer in Washington.

2. The facts are the same as in the previous example except that instead of shipping the parts itself, Company A delivers the parts by a common carrier to Company B in California. The sale is not subject to tax in Tacoma because the parts were not delivered to the buyer in Washington. It is immaterial whether the shipment is freight prepaid or freight collect.

3. The facts are the same as in (1) of this subsection except that Company B has its employees pick up the parts at Company A's Tacoma plant and transport them out of Washington. As delivery of the property to the buyer occurred in Tacoma, the sale is subject to tax.

4. The facts are the same as in (1) of this subsection except that Company B instructs Company A to store the parts at Company A's Tacoma plant pending Company B's future disposition of the parts. Company A agrees to store the parts for Company B, and Company B insures the parts stored at Company A's Tacoma plant. Company A cannot sell the parts stored for Company B to anyone else. Because Company B exercised dominion and control of the goods in Tacoma, delivery of the parts to Company B occurred in Tacoma. The sale is subject to tax.

5. Tacoma will not tax the transactions in (1) and (2) of this subsection if Company A mails the parts to Company B rather than using its own vehicles or a common carrier for out-of-state delivery. By contrast, Tacoma will tax the transaction in (3) of this subsection if Company B's employees mail the parts to an out-of-state location after delivery to Company B occurs in Tacoma.

6. Buyer C, who is located in Alaska, buys parts for its own use in Alaska from Seller D, who is located in Tacoma. Buyer C inspects and takes delivery of the parts in Tacoma at the dock of the carrier selected to transport the parts to Alaska. The sale is subject to tax because Buyer C took delivery of the parts in Tacoma.

7. Company A is located in California and has nexus with Tacoma. It sells machine parts at retail and wholesale. Company B is located in Tacoma and buys machine parts for its own use from Company A. Company A uses its own vehicles to deliver the parts to Company B in Tacoma. Company A is subject to tax on this sale of parts to Company B. Company A has nexus with Tacoma, and delivery of the parts to Company B occurred in Tacoma.

8. The facts are the same as in the previous example (7) except that Company A transports the parts by a common carrier to Tacoma where Company B takes physical possession of the parts. The sale would be subject to tax only if Company A has nexus with Tacoma. Transportation by common carrier does not establish nexus as does delivery into Tacoma with the company's own transportation vehicles.

9. The facts are the same as in (7) of this subsection except that Company B has its employees inspect and take possession of the parts at Company A's California plant for transport to Tacoma. Even if Company A has nexus with Tacoma it is not liable for tax on the sale of these parts because delivery occurred in California.

10. A department store (Taxpayer) has retail stores located in Tacoma, Portland, and in several other states. John Doe goes to Taxpayer's store in Portland, Oregon to purchase luggage. John Doe takes physical possession of the luggage at the store and elects to finance the purchase using a credit card issued to him by Taxpayer. John Doe is a Tacoma resident and the credit card billings are sent to him at his Tacoma address. Taxpayer is not liable for tax because John took delivery of the luggage outside of Tacoma.

11. The facts are the same as in the previous example except that Taxpayer ships the luggage to John Doe for delivery in Tacoma. Taxpayer owes Tacoma tax. Taxpayer has nexus with Tacoma (store located here), and delivery of the luggage to John Doe occurred in Tacoma.

Drop shipments. A drop shipment generally involves two separate sales. A person (the seller) contracts to sell tangible personal property to a customer. The seller then contracts to purchase that property from a supplier and instructs the supplier to deliver the property directly to the seller's customer. The sale between the supplier and seller is a wholesale sale, and if the supplier has nexus with Tacoma and delivers the goods into Tacoma, the supplier is subject to the wholesaling tax. If the customer to whom the goods are delivered is located in Tacoma, and the seller has nexus with Tacoma, then the seller is subject to the retailing tax.

Examples of Drop Shipments.

1. A seller and the supplier are located outside of Tacoma and do not have nexus with Tacoma. The seller's customer is located in Tacoma. Sales of tangible personal property by the seller to the customer and the supplier to the seller are not subject to tax because there is no nexus. In this example delivery was made by a common carrier since delivery in one's own truck would have created nexus.

2. A seller and customer are located in Tacoma, and the supplier is located outside Tacoma and does not have nexus with Tacoma. The supplier's sale of tangible personal property to the seller is not subject to tax. The sale by the seller to the customer is subject to the wholesaling or retailing tax.

3. A seller is located outside of Tacoma and does not have nexus with Tacoma, and the customer and supplier are located in Tacoma. The supplier has nexus with Tacoma and the property was delivered in Tacoma. Wholesaling tax applies to

the sale of tangible personal property by the supplier to the seller. The sale from the seller to its Tacoma customer is not subject to tax since the seller does not have nexus with Tacoma. If the seller in this example had nexus with Tacoma, the transactions would have been subject to tax as provided below in the next example.

4. A seller and supplier have nexus with Tacoma and the customer is located in Tacoma. Wholesaling tax applies to the supplier's sale of tangible personal property to the seller when delivery of the property occurs in Tacoma. The sale from the seller to the customer is subject to wholesaling or retailing tax.

5. Company X is located in Ohio and does not have nexus with Tacoma. Company X receives an order from Company Y, located in Tacoma, for parts that are to be shipped to Company Y in Tacoma for its own use as a consumer. Company X buys the parts from Company Z, which is also located in Tacoma, and requests that the parts be drop-shipped to Company Y. Since Company X has no nexus with Tacoma, Company X is not subject to tax on its sale to Company Y. The wholesale sale by Company Z to Company X is subject to the wholesaling tax as Company Z has nexus with Tacoma and the parts are delivered in Tacoma.

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Revised August 15, 2013
Revised January 1, 1984
Revised January 1, 1981
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #177)

RULE 193C

IMPORTS AND EXPORTS: SALES OF GOODS FROM OR TO PERSONS IN FOREIGN COUNTRIES

Foreign commerce means that commerce which involves the purchase, sale or exchange of property and its transportation from a state or territory of the United States to a foreign country or from a foreign country to a state or territory of the United States.

Imports. An import is an article which comes from a foreign country (not from a state, territory or possession of the United States) for the first time into the taxing jurisdiction of a city.

Exports. An export is an article which originates within the taxing jurisdiction of the city destined for a purchaser in a foreign country. Thus ships stores and supplies are not exports.

Retailing and Wholesaling

Imports. Business and occupation tax applies to sales of tangible personal property that originate in foreign countries if the property is delivered to the buyer or the buyer's representative in Tacoma and the seller has nexus.

Taxation of imported goods is impermissible while the goods are still in the process of importation, i.e., while they are still in import transportation. Further, such goods are not subject to taxation if the imports are merely flowing through this state on their way to a destination in some other state.

Sales of imports by an importer or their agent are not taxable and a deduction will be allowed with respect to the sales of such goods, if, at the time of sale such goods are still in the process of import transportation. Immunity from tax does not extend:

(1) to the sale of imports to Washington customers by the importer thereof or by any person after completion of importation whether or not the goods are in the original unbroken package or container; nor

(2) to the sale of imports subsequent to the time they have been placed in use in this state for the purpose for which they were imported; nor

(3) to sales of products which, although imports, have been processed or handled within this state or its territorial waters.

Exports. A deduction is allowed with respect to export sales when as a necessary incident to the contract of sale the seller agrees to, and does deliver the goods (1) to the buyer at a foreign destination; or (2) to a carrier consigned to and for transportation to a foreign destination; or (3) to a buyer at shipside or aboard the buyer's vessel or other vehicle of transportation under circumstances where it is clear that the process of exportation of the goods has begun, and such exportation will not necessarily be deemed to have begun if the goods are merely in storage awaiting shipment, even

though there is reasonable certainty that the goods will be exported. The intention to export, as evidenced for example, by financial and contractual relationships does not indicate "certainty of export" if the goods have not commenced their journey abroad; there must be an actual entrance of the goods into the export stream.
In all circumstances there must be (a) a certainty of export and (b) the process of export must have started.

As proof of export the seller must obtain and keep in their files a bona fide bill of lading, in which they are the shipper/consignor and by which the carrier agrees to transport the goods sold to a foreign destination; or obtain and keep a copy of the shipper's export declaration, showing seller was the exporter of the goods sold.

It is of no importance that title and/or possession of the goods pass in this city or state so long as delivery is made directly to the export channel as above set forth.
Sales of tangible personal property, of ships stores and supplies to operators of steamships, etc., are not deductible irrespective of the fact that the property will be consumed on the high seas, or outside the territorial jurisdiction of this city, or by a vessel engaged in conducting foreign commerce.

Revised November 26, 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1981
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #177)

RULE 193D

TRANSPORTATION, COMMUNICATION, OR OTHER SERVICES IN INTERSTATE OR FOREIGN COMMERCE

Service and Other Activities. In computing tax there may be deducted from gross income the amount thereof derived as compensation for performance of services which in themselves constitute interstate or foreign commerce to the extent that a tax measured thereby constitutes an impermissible burden upon such commerce. A tax does not constitute an impermissible burden upon interstate or foreign commerce unless the tax discriminates against that commerce by placing a burden thereon that is not borne by intrastate commerce, or unless the tax subjects the activity to the risk of repeated exactions of the same nature from other states. Transporting across the state's boundaries is exempt, whereas supplying such transporters with facilities, arranging accommodations, providing funds and the like, by which they engage in such commerce is taxable.

Examples of Exempt Income:

1. Income from those activities which consist of the actual transportation of persons or property across the state's boundaries is exempt.
2. That portion of commissions received by local brokers or commission merchants for interstate or foreign sales which was paid to out-of-state independent agents is exempt.
3. Income from services rendered by an out-of-state branch or office of the taxpayer regularly maintained outside the state is exempt. (See Rule 194).

Examples of Taxable Income:

1. Compensation received by persons engaged in business within this city for performance of business activities which are only ancillary to transportation across the state's boundaries is taxable.
2. Compensation received by merchandise brokers or commission merchants for services rendered within this city to principals engaged in interstate or foreign commerce is taxable.
3. Compensation received by contracting, stevedoring or loading companies for services performed within this city is taxable.

Persons engaged in stevedoring and associated activities involving the movement of goods and commodities in waterborne interstate of foreign commerce are subject to business tax upon the gross proceeds from such activities. Stevedoring and associated activities means all activities of a labor, service, or transportation nature whereby cargo is loaded or unloaded to or from vessels or barges, passing over, onto, or under a wharf, pier, or similar structure, including also the moving of cargo to a warehouse or similar, holding, or storage yard or area to await further movement in import or export; also the movement to a consolidation freight station to be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loading

on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

Persons engaging in business as an international steamship agent, international custom house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, or international air cargo agent are subject to business and occupation tax upon gross income with respect to such international activities. Persons, including dock companies or wharfage companies, are permitted no deduction of gross income from services performed in this city consisting of the handling of cargo or freight even though such cargo or freight has moved or will move across the state's boundaries.

No deduction is permitted with respect to gross income derived from activities which are ancillary to transportation across the state's boundaries, such as income received by a wharf company or warehouse company for the storage of goods. The mere ownership or operation of facilities by means of which others engage in foreign or interstate commerce is an activity ancillary to such commerce and any income received therefrom is taxable.

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Revised November 23, 2010
Revised January 1. 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #177)

RULE 194

EFFECTIVE FOR TAX PERIODS BEGINNING JANUARY 1, 2020

DOING BUSINESS WITHIN AND WITHOUT THE CITY, ALLOCATION AND APPORTIONMENT

Introduction

Substitute House Bill 1403 simplifies the administration of municipal business and occupation tax apportionment primarily by changing the definition of customer location to adopt market-based sourcing in the income factor. SHB 1403 further simplifies the administration of municipal business and occupation tax apportionment by excluding service receipts from the income factor denominator attributable to jurisdictions where the taxpayer would not be subject to tax and establishing guidelines for the application of an alternative apportionment method. No changes are made to the payroll factor. The intent of this rule is to provide guidance on the new method of apportioning service income beginning January 1, 2020.

Definitions The definitions in this section apply throughout this rule.

"Apportionable income" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.

"Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a city or county within the United States or within a foreign country. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether denominated a gross receipts tax or a tax imposed on the privilege of doing business.

"Compensation" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal internal revenue code.

"Customer" means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business.

"Customer Location" means the following:

(i) For a customer not engaged in business, if the service requires the customer to be physically present, where the service is performed.

(ii) For a customer not engaged in business, if the service does not require the customer to be physically present:
  (A) The customer's residence; or
  (B) If the customer's residence is not known, the customer's billing/mailing address.

(iii) For a customer engaged in business:
  (A) Where the services are ordered from; or
  (B) At the customer's billing/mailing address if the location from which the services are ordered is not known; or
  (C) At the customer's commercial domicile if none of the above are known.

The customer location of a customer under (ii) and (iii) is determined based on a cascading method or series of steps. Only if the first step is unknown may the taxpayer move to the next step and so forth.

"Individual" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

"Not Taxable" means that the taxpayer is not subject to a business activities tax by that city or county within the United States or by that foreign country, except that a taxpayer is taxable in a city or county within the United States or in a foreign country in which it would be deemed to have a substantial nexus with the city or county within the United States or with the foreign country under the standards in RCW 35.102.050 regardless of whether that city or county within the United States or that foreign country imposes such a tax.

"Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.

"Service taxable income" or "service income" means gross income of the business subject to tax under either the service or royalty classification.

"Tax period" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.

Apportionment. (Effective for tax periods January 1, 2020)
Gross income derived from service activities taxed under Tacoma Municipal Code 6A.30.*050(1)(g)* after January 1, 2020, shall be apportioned to the City by multiplying the apportionable income by a fraction, the numerator of which is the payroll factor plus the service income factor and the denominator of which is two (2).

Payroll Factor

The payroll factor is a fraction, the numerator of which is the total amount paid for compensation in the City during the tax period by the taxpayer and the denominator of which is the total compensation paid everywhere during the tax period.

Compensation is paid in the City if:

(i) The individual is primarily assigned within the City;
(ii) The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent (50%) or more of his or her service for the tax period in the city; or
(iii) The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent (50%) or more of his or her service in any city, and the employee resides in the city.

"Individual" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

Service Income Factor
The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the City during the tax period, and the denominator of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the City if the customer location is in the City.

Income Factor Denominator – Excluded Income. Gross income of the business from engaging in an apportionable activity must be excluded from the denominator of the service income factor if, in respect to such activity, at least some of the activity is performed in the city, and the gross income is attributable under the section above to a city or unincorporated area of a county within the United States or to a foreign country in which the taxpayer is not taxable.

If the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in the city, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(i) Separate accounting;
(ii) The exclusion of any one or more of the factors;
(iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or
(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

The party petitioning for, or the tax administrator requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to this section must prove by a preponderance of the evidence:

(i) That the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in the city; and

(ii) That the alternative to such provisions is reasonable. The same burden of proof shall apply whether the taxpayer is petitioning for, or the tax administrator is requiring, the use of an alternative, reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income.

If the tax administrator requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the tax administrator cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this section.

A taxpayer that has received written permission from the tax administrator to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the tax administrator reasonably relied in approving a reasonable alternative method.

Examples

The following examples identify a number of facts and then state a conclusion. The tax status of each circumstance must be determined after a review of all the facts and circumstances.

Example 1: An individual with health insurance seeks medical services at a doctor's office in Seattle. The individual is the customer for purposes of determining customer location even though the individual may utilize their insurance to pay for the medical services provided to them. The individual is required to be present at the doctor's office to receive the services, therefore the service receipts are sourced to the location of the doctor's office where the services are performed.

Example 2: PCA Co. provides electronic design plans for residential homeowners in Washington, Oregon and Idaho. The service is designed to allow home owners to be their own general contractors. Homeowners upload pictures of their home to PCA's website and PCA delivers electronic plans and projected work plans to the customer's email. PCA reports under the service activity classification and has its only business location in Seattle. Because PCA's service does not require the customer to be physically present and their customers are not engaged in business, PCA would source their receipts first to the customer residence. Only if the customer's residence is not known, PCA would source their receipts to the customer's billing/mailing address.

Example 3: MNO Co. provides professional services to customers engaged in business throughout Washington. MNO maintains billing address information for all of its customers. In addition, MNO also has information about the location from which the services are ordered, contracts, invoices, and other communication with the customer. MNO must follow the sourcing hierarchy in the definition of "customer location" above for sourcing service receipts to the customer location. MNO would first determine the location from which the services are ordered; if the location from which the services were ordered was not known, MNO would use the customer's billing or mailing address; and finally, if MNO did not know its customer's billing or mailing address, MNO would source the service income to the customer's place of domicile or where it is headquartered. In this example, MNO has information in its business records to identify the location from which the services were ordered. Therefore, MNO will source its service receipts to the location from which services were ordered and will not use the customer billing addresses.

Example 4: QRS LLC is located in Tacoma, Washington and provides architectural services to customers engaged in business throughout Washington State. TUV Co., a software company located in Seattle, contracts with QRS to draft plans to renovate their branch office in Bellevue. The order was made by TUV personnel located in Seattle.

QRS will source the TUV service receipts to Seattle, the location from which the services were ordered.

Example 5: Safe-T Service LLC is a security company that provides building security to customers engaged in business throughout Washington State. Huge Software Co. contracts with Safe-T Service to perform afterhours security for their sales office in Seattle. The services were ordered from the sales office in Seattle and approved by the company's main office and procurement department in Bellevue. Safe-T Service will source Huge Software Co. service receipts to Seattle, the location from which the services were ordered and not from where the order was approved.

Example 6: Company MMM reports under the service classification and has its only business location in Seattle. MMM has employees but also maintains contracts with independent contractors who sell the company's services. The independent contractors are paid by commissions. The independent contractors are located partly outside of the state and partly within the state. MMM employs managers who visit the independent contractors but are assigned to the Seattle office. Company MMM has nexus outside of the state due to their independent contractors working with MMM's ultimate customer. MMM should compute their taxable service income using the two-factor method. Since their employees and the traveling managers are assigned to the Seattle office, 100% of the payroll is assigned to Seattle. Assuming that 75% of the service income is attributable to customer locations outside of Seattle (see definition of "customer location: above) and 25% inside of Seattle, then the two-factor apportionment would be as follows:

$$\textbf{Apportionment Factor} = \frac{\underline{\textbf{100\% (Seattle payroll factor)}} \\ \underline{\textbf{+ 25\% (Seattle income factor)}}}{\textbf{2}} = \frac{\textbf{125\%}}{\textbf{2}} = \textbf{62.5\%}$$

Example 7: MNO Corp, a service corporation based in Seattle, provides web-based services through the means of the Internet to individual customers who are residents of Seattle and elsewhere. Sales of 20 percent of MNO Corp's web-based services are attributed to customers within Seattle (see definition of "customer location" above) and 40 percent of MNO Corp's service employees are located in Seattle. Assuming that no service income is excluded from the denominator because the taxpayer is taxable in all customer locations, the two-factor apportionment would be as follows:

$$\textbf{Apportionment Factor} = \frac{\underline{\textbf{40\% (Seattle payroll factor)}} \\ \underline{\textbf{+ 20\% (Seattle income factor)}}}{\textbf{2}} = \frac{\textbf{60\%}}{\textbf{2}} = \textbf{30\%}$$

Example 8: Same as Example 7, however 10 percent of MNO Company's sales are attributable to cities in which MNO is "not taxable" (the taxpayer is not subject to a business activities tax and the taxpayer is not deemed to have substantial nexus in the customer location, (see definition of "not taxable" above). Furthermore, some of the service activity is performed in Seattle. As a result, 10 percent of MNO's sales must be excluded from the income factor denominator. Therefore, the service apportionment factor and the two-factor apportionment would be as follows:

$$\textbf{Service activity income factor} = \frac{\textbf{20\% (Service income)}}{\textbf{100\% (Worldwide service activity income) – 10\% (Excluded income)}} = \frac{\textbf{20\%}}{\textbf{90\%}} = \textbf{22.2\%}$$

$$\textbf{Apportionment Factor} = \frac{\textbf{40\% (Payroll factor) + 22.2\% (20/90 Service income factor)}}{\textbf{2}} = \frac{\textbf{62.2\%}}{\textbf{2}} = \textbf{31.1\%}$$

Example 9: Hobbs & Smith Co. provides engineering consulting services to businesses. Hobbs & Smith has offices in Seattle, Bellingham and Tacoma. Hobbs & Smith's service income is attributed 40-percent in Seattle, 40-percent in Bellingham, and 20-percent in Tacoma. Their office staffing is 60-percent in Seattle, 30-percent in Bellingham and 10-percent in Tacoma. Projects are shared among the various offices. A staff working a project may sit in one office and report to a specialist and managers that are in different offices. Therefore, some of the service activity is performed in all of Hobbs & Smith's offices. The service income apportionment factor and two-factor apportionment would be as follows:

$$\textbf{Seattle Apportionment Factor} = \frac{\textbf{60\% (Seattle payroll factor) + 40\% (Seattle income factor)}}{\textbf{2}} = \frac{\textbf{100\%}}{\textbf{2}} = \textbf{50.0\%}$$

$$\textbf{Bellingham Apportionment Factor} = \frac{\textbf{30\% (Bellingham payroll factor) + 40\% (Bellingham income factor)}}{\textbf{2}} = \frac{\textbf{70\%}}{\textbf{2}} = \textbf{35.0\%}$$

$$\textbf{Tacoma Apportionment Factor} = \frac{\textbf{10\% (Tacoma payroll factor) + 20\% (Tacoma income factor)}}{\textbf{2}} = \frac{\textbf{30\%}}{\textbf{2}} = \textbf{15.0\%}$$

Example 10: Same as Example 9, however Hobbs & Smith only has offices in Seattle and Tacoma. Hobbs & Smith service income is 50-percent in Seattle, 30-percent in Tacoma, and 20-percent in Fife under the definition of "customer location" above. Their office staffing is 40-percent in Seattle and 60-percent in Tacoma. Hobbs & Smith is "not taxable" in Fife because Fife does not impose a business activities tax and the taxpayer is not deemed to have a substantial nexus in Fife (see definition of "not taxable" above). Fife customers travel to the Tacoma office for business meetings with Hobbs & Smith. Projects are shared among the various offices. A staff working a project may sit in one office and report to a specialist and managers that are in different offices. Therefore, some of the service activity is performed in all of Hobbs & Smith's offices. The service income apportionment factor and the two-factor apportionment would be as follows:

$$\textbf{Seattle service income factor} = \frac{\textbf{50\% (Service income)}}{\textbf{100\% (Worldwide service income) – 20\% (Excluded income)}} = \frac{\textbf{50\%}}{\textbf{80\%}} = \textbf{62.5\%}$$

$$\textbf{Seattle Apportionment Factor} = \frac{\textbf{40\% (Seattle payroll factor) + 62.5\% (50/80 Service income factor)}}{\textbf{2}} = \frac{\textbf{103\%}}{\textbf{2}} = \textbf{51\%}$$

$$\textbf{Tacoma service income factor} = \frac{\textbf{30\% (Service income)}}{\textbf{100\% (Worldwide service income) – 20\% (Excluded income)}} = \frac{\textbf{30\%}}{\textbf{80\%}} = \textbf{37.5\%}$$

$$\textbf{Tacoma Apportionment Factor} = \frac{\textbf{60\% (Tacoma payroll factor) + 37.5\% (30/100 Service income factor)}}{\textbf{2}} = \frac{\textbf{98\%}}{\textbf{2}} = \textbf{49\%}$$

Example 11: Same as Example 10, except all work is done in the Seattle office and the Tacoma office handles the administrative operations of the business. Hobbs & Smith have nexus in Tacoma because of the presence of the office. However, because none of the work is done in Tacoma, none of the Fife income would be

excluded from the service income factor for Tacoma. The service income apportionment factor and the two-factor apportionment would be as follows:

$$\textbf{Seattle service income factor} = \frac{\textbf{50\% (Service income)}}{\textbf{100\% (Worldwide service income) – 20\% (Excluded income)}} = \frac{\textbf{50\%}}{\textbf{80\%}} = \textbf{62.5\%}$$

$$\textbf{Seattle Apportionment Factor} = \frac{\textbf{40\% (Seattle payroll factor) + 62.5\% (50/80 Service income factor)}}{\textbf{2}} = \frac{\textbf{103\%}}{\textbf{2}} = \textbf{51\%}$$

$$\textbf{Tacoma service income factor} = \frac{\textbf{30\% (Service income)}}{\textbf{100\% (Worldwide service income)}} = \frac{\textbf{30\%}}{\textbf{100\%}} = \textbf{30\%}$$

$$\textbf{Tacoma Apportionment Factor} = \frac{\textbf{60\% (Tacoma payroll factor) + 30\% (30/80 Service income factor)}}{\textbf{2}} = \frac{\textbf{90\%}}{\textbf{2}} = \textbf{45\%}$$

Allocation. The following allocation rules apply to gross income, except for financial institutions subject to RCW 82.14A. The new allocation procedure requires businesses to allocate or source their sales of tangible personal property to the local jurisdiction where delivery takes place.

All activities other than those taxed as service or royalties under TMC 6A.30.050(A)(9) shall be allocated to the location where the activity occurs.

Retailing/Wholesaling/Retail Services. Gross income is allocated to the City of Tacoma if the goods or services are delivered within the city and the taxpayer is "engaging in business" in Tacoma as defined in TMC 6A.30.030.

Goods delivered by a Tacoma seller to a point outside of the city may be deducted from the gross proceeds of sales.

Gross income for the sale of intangibles such as royalties, trademarks, patents or goodwill are allocated 100% to the location of the headquarters or **commercial domicile** of the taxpayer.

Adopted January 1, 2020

RULE 194A

EFFECTIVE THROUGH TAX PERIODS ENDING DECEMBER 31, 2019

DOING BUSINESS WITHIN AND WITHOUT THE CITY, ALLOCATION AND APPORTIONMENT

Persons engaged in business outside this city who (1) sell or lease personal property to buyers or lessees in this city, or (2) perform construction or installation contracts in this city, or (3) render services to others herein, are doing business in this city, whether or not they have a permanent place of business in this city.

Persons engaged in business in or having a place of business in this city who (1) sell or lease personal property to buyers or lessees outside this city, or (2) perform construction or installation contracts outside this city, or (3) render services to others outside this city, are doing business both within and without this city.

Whether or not such persons are subject to business and occupation tax under the law depends upon the kind of business and the manner in which it is transacted.

Businesses engaged in business in other municipal jurisdictions are required to allocate their sales of tangible personal property and apportion their service and other activities income based on the methods described below.

"Compensation" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal Internal Revenue Code.

"Individual" means any individual who, under the usual common law rules applicable in determining the employer employee relationship, has the status of an employee of that taxpayer.

"Customer location" means the city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place. The term is not a commonly used term in other tax apportionment methods. Phone contacts are assigned to the place of business.

"Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.

"Service taxable income" or "service income" means gross income of the business subject to tax under the service and other business activity classification, including but not limited to royalty income.

"Taxable in the customer location" means either that a taxpayer is subject to a gross receipts tax in the customer location for the privilege of doing business, or that the government where the customer is located has the authority to subject the taxpayer to gross receipts tax regardless of whether, in fact, the government does so.

Allocation and Apportionment. In an effort to eliminate multiple taxation of taxpayers by various cities, allocation and apportionment rules were instituted. Beginning January 1, 2008, RCW 35.102.130 established new allocation and apportionment requirements for Washington cities with a gross receipts tax. The following allocation rules apply to gross income, except for financial institutions subject to RCW 82.14A. The new allocation procedure requires businesses to allocate or source their sales of tangible personal property to the local jurisdiction where delivery takes place. The apportionment procedures require businesses that report under the service and other tax classification to apportion their income based on a two-factor formula. The two factors are payroll and service revenue.

Persons conducting all business activities within the City whose sales and services are delivered wholly within the city (does not engage in any business activity outside of Tacoma) do not change their tax reporting requirements and should compute their tax in the same manner as they have historically reported their tax prior to January 1, 2008.

Allocation. All activities other than those taxed as service or royalties under TMC 6A.30.050 (A)(9) shall be allocated to the location where the activity occurs.

Retailing/Wholesaling/Retail Services. Gross income is allocated to the City of Tacoma if the goods or services are delivered within the city and the taxpayer is “engaging in business” in Tacoma as defined in TMC 6A.30.030.

Goods delivered by a Tacoma seller to a point outside of the city may be deducted from the gross proceeds of sales.

Gross income for the sale of intangibles such as royalties, trademarks, patents or goodwill are allocated 100% to the location of the headquarters or **commercial domicile** of the taxpayer.

Apportionment

Service & Other Activities. Gross income taxed under service and other activities shall be apportioned to a city by multiplying service income by a payroll factor (based on the payroll within the jurisdiction), plus the service income factor (based on the income producing activity attributable for tax purposes within the jurisdiction), divided by two:

$$\text{Total services income} \times \frac{\text{(Payroll Factor + Service Income Factor)}}{2}$$

• Payroll Factor = $\frac{\text{Total Compensation in City}}{\text{Total Compensation Everywhere}}$

Compensation is paid in the city if:

(i) The individual is **primarily assigned** within the city;

(ii) The individual is not primarily assigned to any place of business for the tax period and the **employee performs 50% or more** of his or her service for the tax period in the city; or

(iii) The individual is not primarily assigned to any place of business for the tax period, the individual does not perform 50% or more of his or her service in any city and the **employee resides in the city**.

"Primarily assigned" is defined as the business location of the taxpayer where the individual performs his or her duties. Business location must be a physical address, other than a PO Box.

• Service Income Factor= $\frac{\text{Service Income in City}}{\text{Service Income Everywhere}}$

Service income is in the city if:

(i) The **customer location** is in the city; or

(ii) The income producing activity is performed in more than one location and a **greater proportion of the service income producing activity** is performed in the city than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or

(iii) The **service income producing activity is performed within the city**, and the taxpayer is not taxable in the customer location.

Other:

Specific provisions also apply to the newspaper and publishing businesses to exempt them from apportionment requirements.

Specific exemptions apply in rare cases of professional employer services such as a shared receptionist services in an office building.

If the company does not have payroll in this city, but has payroll, the payroll factor will be zero and the Total Apportionment Factor is still divided by two. If the company has no payroll whatsoever, the Total Apportionment Factor is divided by one.

Manufacturing – see Multiple Activities Tax Credit –TMC 6A.30.070

Revised August 19, 2014
Revised December 2013
Revised November 23, 2010
Revised June 13, 1988
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #178)

RULE 196

CREDIT LOSSES, BAD DEBTS, RECOVERIES

"Bad debt" means income or revenue amounts written off the taxpayer's books of record when it is decided that the income previously reported by a taxpayer will not be received.

Bad debt deductions. In computing the business and occupation tax, taxpayers whose regular books of accounts are kept on an accrual basis may deduct the amount of business credit losses actually sustained, providing that such deduction will be allowed only with respect to activities upon which a tax has been previously paid and providing that the amount has not been otherwise deducted and that credits have not been previously issued.

Bad debt deductions must be taken by the taxpayer during the tax reporting period during which such bad debts were actually charged off on the taxpayer's books of account and would be eligible for a bad debt deduction for federal income tax purposes. Bad debts do not include:

(i) Expenses incurred in attempting to collect debt; and
(ii) The value of repossessed property taken in payment of the debt; and
(iii) Amounts due on property that remains in the possession of the seller until the full purchase price is paid.

In cases where the amount of bad debts legitimately charged off in a particular reporting period exceeds the gross income for such period, the excess of the amount of the bad debts charged off during such period may be deducted from the gross income of the subsequent tax reporting period.

A dishonored (bad) check which proves to be uncollectible is a bad debt, to the extent it was taken as payment for goods or services on which business tax was previously reported and paid.

Extracting or manufacturing. Bad debt deductions under the extracting or manufacturing classifications will be allowed only when the value of products is computed on the basis of gross proceeds of sales.

Determining credit losses—Specific charge off method. The amount of credit losses actually sustained must be determined in accordance with the specific charge-off method which is the amount actually charged off within the tax reporting period with respect to debts determined to be worthless.

Worthlessness of a debt is usually evidenced when all the surrounding and attending circumstances indicate that legal action to enforce payment would result in an uncollectible judgment.
A "charge-off" of a debt, either wholly or in part, must be evidenced by entry in the taxpayer's books of account.

When the taxpayer actually determines and charges off bad debts on a tax reporting period basis, the amount so charged off each period shall be considered prima facie as a proper deduction for such period.

When bad debt losses are ascertained annually upon specific charge-off method, the deduction must be taken against the gross amount reported for the period in which the bad debts were actually charged off.

Credits, refunds, and deductions for bad debts are based on federal standards for worthlessness under section 166 of the Internal Revenue Code. If a federal income tax return is not required to be filed (for example, federal tax exempt entities), the taxpayer is eligible for a bad debt credit, refund, or deduction on the Tacoma business & occupation tax return if the taxpayer would otherwise be eligible for the federal bad debt deduction.

Recoveries. Amounts subsequently received on account of a bad debt or on account of a part of such debt previously charged off and allowed as a deduction for business license tax purposes, must be included in gross proceeds of sales (including value of products when measured by gross proceeds of sales) or gross income of the business reported for the taxable period in which received. This is true even though the recoveries during such period exceed the amount of the bad debt charge-off.

Statute of limitations for claiming bad debts. No credit, refund, or deduction, as applicable, may be claimed for debt that became eligible for a bad debt deduction for federal income tax purposes more than four years before the beginning of the calendar year in which the credit, refund, or deduction is claimed.

Revised August 15, 2014
Revised November 21, 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #180)

RULE 197

WHEN TAX LIABILITY ARISES

Gross proceeds of sales and gross income shall be included in the return for the period in which the value proceeds or accrues to the taxpayer.

Accrual Basis. When returns are made upon the accrual basis, value proceeds or accrues to a taxpayer as of the time the taxpayer actually receives, becomes legally entitled to receive or in accord with the system of accounting regularly employed enters as a charge against the purchaser, customer, or client the amount of the consideration agreed upon, whether payable immediately or at a definitely determined future time.

Amounts actually received do not constitute value accruing to the taxpayer in the period in which received if the value accrues to the taxpayer during another period. It is immaterial if the act or service for which the consideration accrues is performed or rendered, in whole or in part, during a period other than the one for which the tax return is made. The controlling factor is the time when the taxpayer is entitled to receive, or takes credit for, the consideration.

Cash Receipts Basis. When returns are made upon cash receipts and disbursements basis, value proceeds to a taxpayer at the time the taxpayer receives the payment, either actually or constructively. It is immaterial that the contract is performed, in whole or in part, during a period other than the one in which payment is received. See Rule 199 for limitation as to persons who may report on the cash receipts basis.

Special Application, Contractors. In the case of building and construction contractors value proceeds or accrues to the taxpayer as follows:

1. When the taxpayer maintains his or her accounting records on the accrual basis, as of the time the contractor becomes entitled to compensation under the contract:
   a. If by the terms of the contract the taxpayer becomes entitled to compensation only upon the completion of the work, value accrues as of the earlier of the completion of the work, or, any use of the facilities being constructed, or, 60 days after the facility is substantially complete.
   b. If by the terms of the contract the taxpayer becomes entitled to compensation upon estimates as the work progresses, value, to the extent of such estimates, accrues as of the time that each estimate is made and the balance at the time of the completion of the work or of the final estimate.
2. When the taxpayer maintains his or her accounting records on the cash receipts basis, as of the time that the consideration or compensation is received, but provided that the contractor shall make an annual adjustment of accounts receivable according to the procedure set forth in Method Three of Rule 199 Accounting Methods.

Warehouse Operators. In the case of warehouse operators value proceeds or accrues to the taxpayer as follows:

1. When the taxpayer is reporting on the accrual basis at the time the charge is entered against the owner of the goods stored in accordance with the terms of the contract between the parties and the regular system of accounting employed by the taxpayer. Value accrues when the charge is entered whether the consideration for storage is at a fixed rate per unit per month or other period or at a flat charge regardless of the length of time and whether payable periodically or at the time of withdrawal. Thus, where a warehouse operator, keeping books on the accrual basis, customarily enters as a charge to the owner of the goods and a credit to storage income the full amount of a flat storage charge as of the time the goods are received, even though the time for payment is deferred until withdrawal of the goods, value accrues as of the time the goods are received. However, if the warehouse operator customarily does not enter such charge until the time of withdrawal, value accrues as of such later date.
2. When the taxpayer is reporting upon a cash receipts basis, value proceeds as of the time the payment for storage is received.

Revised August 19, 2014
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1982
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #181)

RULE 198

CONDITIONAL AND INSTALLMENT SALES, METHOD OF REPORTING

Persons making conditional sales or other installment sales of tangible personal property must report the total selling price of such sales in the tax reporting period in which the sale is made.

Financing leases as defined in Rule 211 are taxable as installment sales; however all other lease arrangements are not taxable as installment sales. Interest income or finance charges received from an installment sale are taxable under the service and other classification (see Rule 109).

A deduction from gross proceeds of sales as a credit loss is allowed to such sellers for the amount of the unpaid balance of the contract price on any installment sale if and when the property purchased is repossessed upon default by the buyer.

Revised February 24, 2015
Revised September 18, 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (old Rule #182)

RULE 199

ACCOUNTING METHODS

In computing tax liability under the business and occupation tax one of the following accounting methods must be used.

Method One, Cash Basis. Only persons engaged in a strictly cash business will be permitted to make returns on a cash receipts basis. Certain small businesses which occasionally make a sale without receiving cash and which do not keep any file, record or general ledger account of such sales may be considered as doing a cash business, providing the volume of such sales never exceeds 5% of the gross volume of business. Under this method it is not necessary to make any adjustment at the end of the year with respect to accounts receivable.

Such businesses are not entitled to any bad debt deductions. See Rule 196.

Method Two, Accrual Basis. Persons operating their business on the accrual basis must report under the business and occupation tax for such tax reporting period the gross proceeds from all cash sales made during such period, together with the total amount of charge sales during such period.

Method Three, Cash Receipts, Accounts Receivable Adjustment. Persons doing a charge business who do not record such charges as sales at the time the sale is made may report for tax purposes under Method Three.

Persons may report and pay the tax on the amount received as cash sales plus all cash received on accounts during each period. If this method is adopted, an adjustment shall be made at the end of the calendar year to add to the amount of accounts receivable at the end of the year (not previously reported) to be reported along with cash receipts. A statement must accompany the return indicating the amount of accounts receivable added. A deduction may be taken on subsequent returns filed in periods when cash is received upon accounts receivable so reported. Such receipts should be included in Column 2 (Gross Income) and then listed as a deduction on the tax return and a note added to explain on the bottom of the return as "cash received upon accounts receivable reported as of December 31, 20xx."

Where bad debts are charged off during any taxable year the amount must be added to the accounts receivable outstanding at the end of the year before making adjustments provided for in Method Three.

Constructive receipt. "Constructive receipt" means income that a cash basis taxpayer is entitled to receive, but will not receive because of an action taken by the taxpayer. Constructive receipts are taxable in the tax reporting period in which the taxpayer gives up the entitlement to actual future receipt of the income. The following examples show how this applies to a cash basis taxpayer.

(a) XYZ has $10,000 in accounts receivable which XYZ expects to collect over the next six months. XYZ elects to sell these accounts receivable for eighty percent of their face value. Even though the taxpayer only receives $8,000 from the sale of the accounts receivable, XYZ is taxable on the full $10,000 because it has taken constructive receipt of the full $10,000 by taking an action to give up entitlement to the $2,000.

(b) XYZ has $1,500 in accounts receivable from customers who are delinquent in making payment. XYZ turns these accounts receivable over to a collection agency with the understanding that the collection agency may keep half of whatever is collected. The collection agency over the next month collects $500 and keeps $250 of this amount for its services. XYZ is taxable on the full $500 collected by the collection agency. XYZ has constructive receipt of this amount and the $250 retained by the collection agency is a cost of doing business to the taxpayer.

(c) XYZ is involved in a bankruptcy proceeding. The receipt of cash from accounts receivable will be placed in an escrow account. These funds will be used to pay creditors and a portion of these amounts will be given to the taxpayer. The full amount of the accounts receivable collected and going into the escrow is taxable income to XYZ. XYZ has received the full benefit of the cash received from the accounts receivable through payment of XYZ's creditors.

Revised September 9, 2014
Revised October 10, 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #183)

RULE 200

LEASED DEPARTMENTS

"Leased departments" mean space within a store that is leased to another business in such a way that a purchaser would not necessarily know that the merchandise is from a business other than the store owner or operator. An example of this is a maternity clothes department in a department store that could be a leased department and operated by a business other than the department store and under the department stores name.

Reporting. Any person who leases departments or space within their store or business to another business entity may include in its tax returns the gross receipts or gross sales made by the lessee where such lessor keeps the books for the lessee and makes collection on the latter's account; provided, however, that each lessee must apply for and obtain from the Division of Tax and License a certificate of registration, as provided under Rule 101. The lessee will remain liable for its tax liability if the lessor fails to make the proper return or fails to pay taxes due.

Lessor reports gross receipts. When the gross receipts or gross sales of such leased department is included in the return made by the lessor, a statement shall be submitted to the division showing the name of the lessee of each such department, a description of the department operated, and a statement that the lessor will make returns for each of the departments so included and assume liability for the tax accruing against the lessees of such departments; but the lessee shall not be relieved from their liability for taxes.

Any taxpayer making returns for any leased department shall report the total tax liability thereof under the business and occupation tax, including therein all cash and charge sales.

Lessee reports gross receipts. When the lessor takes a deduction for the leased departments' gross receipts from its gross receipts, the lessor shall submit a statement to the division showing the name of the lessee of each such department and their related gross receipts.

Leased department rental. Where the lessor receives a flat monthly rental or a percentage of sales as rental for a leased department, such income is presumed to be from the rental of real estate and is not taxable. In determining whether an occupancy is a rental of real estate, all the facts and circumstances of the agreement or arrangement will be considered, including the actual relationship of the parties. Written agreements,

while not required, are preferred and are given considerable weight in deciding the nature of the occupancy. While the fact that the written agreement may identify the occupancy as a "lease" is not controlling, agreements which contain the following provisions support the presumption that the occupancy is a rental of real estate:

1. The occupant is granted exclusive possession and control of the space.
2. The occupancy is for a time certain which is more than 30 days, i.e. month to month, annual, etc.
3. The parties are required to notify each other in the event of termination of the occupancy.

Lessor Services. If the lessor provides any clerical, accounting, janitorial or other services to the lessee, the lessor must report the income from these services under the service and other activities classification. The amounts for providing these services must be segregated from the amounts received from the rental of real estate. In the absence of a reasonable segregation, it will be presumed that the entire income is for providing these services.

Revised September 9, 2014
Revised April 25, 2012
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #184)

RULE 201

INTERDEPARTMENTAL CHARGES

The term "interdepartmental charges" means amounts credited to the sales account or other gross income account of a taxpayer for goods, materials or services furnished by one department or branch of a business entity to another department or branch of the same business entity.

Manufacturing/Extracting
Tax is due upon the value of products extracted or manufactured by one branch or department of a business entity for commercial or industrial use of another branch or department of the same business. See Rule 134.

Exemptions
Amounts representing interdepartmental charges as defined above may be excluded in computing tax due.

This does not permit the exclusion or deduction of charges against or income derived from an affiliated or related entity.

Municipal corporations are entitled to an exclusion of interdepartmental charges in computing tax whether or not the charges represent an actual transfer of money or merely a bookkeeping entry. See also Rule 189.

Revised September 4, 2014
Revised November 14, 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #185)

RULE 202

POOL PURCHASES

The term "pool purchase" means the joint purchase by two or more persons, engaging in independent business activities, of commodities in carload or truck load quantities for the purpose of obtaining a purchase price or freight rate which is less than when purchased or delivered in smaller quantities.

The term "principal member" means that member of the pool to whom the goods are charged by the vendor for the commodities purchased.

In computing tax liability of the principal member under TMC Chapter 6A, the amount received from other members of the pool for their proportionate share of the cost may be deducted from the principal's gross proceeds of sales.

This deduction is allowed only when all of the following conditions are met:

1. The amount received is included in gross proceeds of sales.
2. The pool purchase agreement was entered into prior to the time of placing the order for the commodities purchased.
3. The pool purchase agreement provides that each member shall accept a specific portion of the shipment.
4. Division of the shipment is made prior to warehousing of the commodities by a member of the pool.

In no event will a "pool purchase" deduction be allowed when an agreement relative to the amount of the share to be distributed to any member is made after the date of the purchase order, or where one member of a pool pays an amount for his portion in excess of the proportionate amount paid by another member.

Revised September 9, 2014
Revised November 12, 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #186)

RULE 203

CORPORATIONS, MASSACHUSETTS TRUSTS

Each separately organized corporation is a "person" within the meaning of the law, notwithstanding its affiliation with or relation to any other corporation through stock ownership by a parent corporation or by the same group of individuals.

Each corporation shall file a separate return and include herein the tax liability accruing to such corporation. This applies to each corporation in an affiliated group, as the law makes no provision for filing of consolidated returns by affiliated corporations or for the elimination of intercompany transactions from the measure of tax.

Each unincorporated association organized under the Massachusetts Trust Act of 1959 is likewise taxable in the same way as are separate corporations.

Revised September 10, 2014
Revised November 12, 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #187)

RULE 204

OUTDOOR ADVERTISING AND ADVERTISING DISPLAY SERVICES

“Outdoor advertising" means the business of rendering an advertising service to others by posting or painting advertising copy upon billboards owned or controlled by the outdoor advertiser.

“Advertising display service" means the business of installing and maintaining advertising displays upon property of others, when title to the property used in the display is retained by the person engaged in such business.

Rental of billboard and advertising space on real property. The rental of billboards, billboard space, or advertising space on the side of buildings is a "license to use" real property and subject to tax. It is not a rental of real property even when the period of the rental is longer than 30 days.

Service and Other Activities. Gross income received from advertising service and rental of billboard and advertising space will be taxable under the service and other activities tax classification.

Revised September 10, 2014
Revised November 14, 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #188)

RULE 205

SALES OF UTILITY SERVICES BY BUILDING COMPANIES

When building companies, apartment house owners or other real estate owners or lessors furnish utility services such as heat and electrical energy to their own tenants of office buildings, apartment houses and storerooms under circumstances indicating it is a part of the normal and customary landlord-tenant relationship and the charge made therefore is the cost of this utility service to the owner or lessor prorated among his tenants based upon the use or consumption of such services the income derived therefrom is construed to be incidental to and a part of gross income from the renting or leasing of real estate and not subject to the provisions of the business and occupation tax. This is true whether the charge therefor is included in a lump sum rental or is billed separately.

Service and Other Activities. When the furnishing of utility services is not in accordance with the foregoing, the income derived therefrom is considered to be a separate business activity and is taxable under the service and other classification.

Revised September 10, 2014
Revised November 14, 2013
Revised November 23, 2010
Revised January 1, 1984
Adopted January 1, 1976

RULE 207

LEGAL, ARBITRATION AND MEDIATION SERVICES

"Arbitration" means the process by which the parties to a dispute submit to the hearing and judgment of an impartial person or group appointed by mutual consent or statute.

"Arbitration services" means services relating to the resolution of a dispute submitted to arbitration.

"Attorney" means an active member of a state Bar Association engaged in the practice of law. The term also includes a professional service corporation incorporated under RCW chapter 18.100, a professional limited liability company formed under RCW chapter 18.190, or a partnership, provided the ownership of these business entities are properly restricted to attorneys and organized primarily for engaging in the practice of law.

"Legal services" means services relating to or concerned with the law. Such services include, but are not limited to, representation by an attorney (or other person, when permitted) in an administrative or legal proceeding, legal drafting, paralegal services, legal research services, arbitration, mediation, and court reporting services.

"Mediation" means the process by which the parties to a dispute or negotiations agree to have an intermediary hear their differences and/or positions and facilitate and/or make suggestions concerning an agreement and/or the resolution of their dispute.

Service and Other Activities. Gross income from legal, arbitration, or mediation services is subject to the service and other activities classification.

Gross income. The gross income of the business generally includes the amount of compensation paid for legal, arbitration, or mediation services and amounts attributable to providing those services (i.e., charges for tangible personal property directly used or consumed in supplying legal, arbitration, or mediation services). Reimbursed general overhead costs are generally included in the gross income of the business even though indirectly related to litigation. Any reimbursed costs (not directly related to litigation) for which the attorney assumes personal liability for payment are also included in gross income.

Overhead costs. Amounts received (or, for taxpayers reporting under the accrual accounting method, accrued) to compensate for overhead costs are fully subject to tax. Such overhead costs are taxable even though they may be separately stated on the billings or expressly denominated as costs of the client. Examples of such overhead costs include, but are not limited to:

- Photocopy or other reproduction charges, except charges paid to the provider, or the agent of the provider, for the official or original copy of a record, or other document, provided for litigation;

- Long distance telephone tolls;
- Secretarial expenses;
- Office rent;
- Office supplies;
- Travel, meals and lodging;
- Utilities, including facsimile telephone charges; and
- Postage, unless paid for service of legal papers as a direct cost of litigation.

Excluded amounts. The following amounts are excluded from gross income if complete and accurate records are maintained of these amounts.

- Client trust accounts. The gross income of the business does not include amounts held in trust for the client.
- Litigation expenses. Attorneys are bound by the rules of professional conduct. RPC 1.8(e) prohibits an attorney from financing the expenses of contemplated or pending litigation unless the client remains ultimately liable for these expenses. This means that an attorney normally acts solely as the agent for the client when financing litigation. Accordingly, amounts received from a client for the direct expenses of litigation do not constitute gross income to the attorney. Amounts received (or, for taxpayers reporting under the accrual accounting method, accrued) to compensate for the following direct litigation expenses are not included in gross income:

    (A) Filing fees and court costs;
    (B) Process server and messenger fees;
    (C) Court reporter fees;
    (D) Expert witness fees; and
    (E) Costs of associate counsel.

A cash basis taxpayer cannot exclude or deduct amounts of unreimbursed litigation expenses. For example, an attorney advances all the litigation expenses for a contingency fee case. The case is ultimately resolved against the attorney's client and the expenses are not repaid because of the client's bankruptcy. The attorney cannot then deduct these expenses as a bad debt or otherwise exclude them against other income earned by the attorney.

Expense advances and reimbursements. Sometimes in the regular course of business an attorney may receive amounts from a client for expenses of third-party providers or other costs incurred in connection with a legal matter other than litigation. Such amounts are excluded from the business and occupation tax only if the attorney has no obligation for payment other than as agent for the client or equivalent commitment for their payment. Generally, such amounts will be for third-party service providers (for example, accountants, appraisers, architects, artists, drafters, economists, engineers, investigators, physicians, etc.). However, these costs could also include client expenses for registration, licensing or maintenance fees, title and other insurance premiums, and escrow fees paid to third-party escrow agents. These costs are

excludable only when the attorney does not have any personal liability to the third-party provider for their payment.

Records requirement. In order to support the exclusion from taxable gross income of any of the foregoing expenses, the attorney must maintain records which indicate the amount of the payment received from the client, the name of the client, the name of the person to whom the attorney has made payment, and a description of the item for which payment was made. If the foregoing expenses are incurred outside the context of litigation or contemplated litigation, the attorney must maintain records which indicate the amount of the payment received, the name of the client, and the person to whom the attorney makes payment. In addition, the attorney must provide the person to whom payment is made with written notice that:

- Payment is made, or will be made on behalf of a named client; and
- The attorney assumes no liability for payment, other than as agent for the named client.

Multiple business activities. Attorneys and other persons engaged in providing legal, arbitration, and mediation services sometimes engage in other business activities which are classified under a different tax classification (i.e., escrow services). In some circumstances, income from these other business activities will be subject to tax under a different tax classification.

Independent business activities. If the other activities engaged in by the person are independent from the legal, arbitration, or mediation services provided to the client, these activities are taxed based on the tax classification that applies to each of those other activities, provided these other activities are separately accounted for and/or itemized as a separate amount in billings or invoices to the client. Failure to separately account and/or itemize for such activities will result in classification of all activities under the service and other activities classification.

Combined business activities. If the other activities are related to the legal, arbitration, or mediation services provided to the client, the primary activity provided the client in each taxable period will determine the tax classification. Generally, the activity will be considered as related when there is some interaction between the two activities to reach an ultimate goal (i.e., a law firm which provides legal advice and brokers the financing of a business arrangement). There are a number of elements which may be examined to determine whether a sufficient relationship between the multiple activities exists. Some elements considered are the timing for the selection and provision of services, the relationship between the contracting parties, the procedure used in the selection process, the dependence of the relationship between the two or more activities, the relationship of the prices between the two activities, and the means of payment selected for the activities.

Revised September 10, 2014
Revised November 12, 2013
Revised November 23, 2010

Revised June 13, 1988
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #189)

RULE 208

ACCOMMODATION SALES, EXCHANGE OF FUNGIBLE PRODUCTS

In general, retail sellers who sell tangible personal property at cost to another seller of the same kind of tangible personal property to fill a sales order for its customer as described herein may claim an accommodation sale exemption. Exchanges of fungible products are taxable unless they meet the criteria of an accommodation sale or qualify for some other exemption or deduction.

"Accommodation sales" means only sales for resale by persons regularly engaged in the business of making retail sales of the type of property so sold to other persons similarly engaged in the business of selling such property where:

(1) The amount paid by the buyer does not exceed the amount paid by the seller to their vendor in the acquisition of the article; and
(2) The sale is made as an accommodation to the buyer to enable the buyer to fill a bona fide existing order of a customer or is made within fourteen (14) days to reimburse in kind a previous accommodation sale by the buyer to the seller.

Provided, that where the seller holds itself out as being regularly engaged in the business of making sales at wholesale of such property, such sales shall be included in its principal business activity, and not exempt from tax. (See 6A.30.90)

“Fungible product” means products that lose their physical identity to the point that they cannot be distinguished from like-kind items when commingled. Examples are gasoline, bulk oil products, grains, logs, wood chips, fruits, and vegetables.

Accommodation Sale Exemption
In computing tax under the retailing classification, receipts from accommodation sales may be excluded from the reported gross receipts amount. Each seller claiming this exemption must retain sufficient evidence to prove the nature of the transactions as a part of their sales records to qualify for this exemption.

The following conditions must be satisfied for the exemption to apply:

(1) Amount paid by buyer may not exceed amount paid by seller. The amount the buyer pays to the seller may not exceed the amount the seller paid to the seller’s vendor in the acquisition of the property. A seller that manufactured the property sold cannot claim the exemption because the property has not been acquired from a vendor.

- Expenses associated with preparing property for sale. Under some circumstances, a seller may add reasonable expenses to the invoice cost of the article sold in connection with an accommodation sale, including but not limited to, actual freight or delivery costs incurred by the seller and billed as such to the buyer. The specific facts concerning such additional costs must

be submitted to the Director for a tax determination prior to claiming the exemption.

- Holdbacks or discounts. The amount paid by the seller may not be reduced by the amount of any manufacturer's holdbacks or discounts received after an article has been sold even though the seller may retain such holdbacks or discounts.

(2) Sale is an accommodation to fill an existing order. The sale must occur as an accommodation to allow the buyer to fill a bona fide existing order of a customer or occur within fourteen days to reimburse in-kind a previous accommodation sale by the buyer to the seller. A bona fide existing order is present if there is a commitment by the buyer's customer to purchase the property. The buyer must retain records demonstrating the customer's commitment to purchase, such as a written agreement or deposit. For example, Recreational Vehicle Dealer A purchases a fifth-wheel trailer from Recreational Vehicle Dealer B as an accommodation. Ten days later, Dealer A sells a travel trailer to Dealer B as reimbursement in-kind of the previous accommodation sale. For Dealer A to claim the business and occupation tax exemption for the sale of the travel trailer to Dealer B, Dealer A must keep sufficient records to document a bona fide existing customer order for the fifth-wheel trailer purchased from Dealer B.

(3) Documentation. A person claiming the exemption for an accommodation sale must maintain sufficient documentation to verify the exemption. In addition to the documentation noted above establishing, where pertinent, the existence of a bona fide existing customer order, this documentation must also include:

- The buyer's name and address;
- The seller's name and address;
- The buyer's UBI/tax registration number;
- Description of the property purchased, including make, model, and serial numbers as appropriate;
- The date of purchase and the purchase price;
- A statement by the buyer as to whether the purchase is to fill a bona fide existing order or to reimburse a previous in-kind accommodation sale, including information identifying the previous accommodation sale; and
- The buyer's signature and title.

Exchange of fungible products

Persons engaged in the selling and distributing of fungible products often enter into exchange agreements. An exchange is a sale regardless of whether it results in a profit because a transfer of the ownership of, title to, or possession of property for valuable consideration occurs. Exchanges are subject to the business and occupation tax unless otherwise exempt by law.

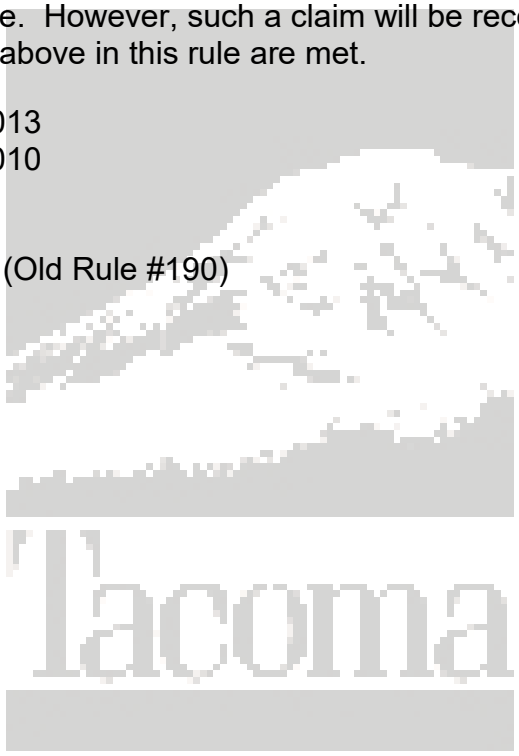
Exchange agreements. Under typical exchange agreements, a person is required to furnish products to another person selling and distributing the same products, sometimes receiving payment in-kind or with a substitute product at a later date.

Exchange agreements may require the person to arrange for direct delivery from his or her vendor to the third party distributor. In some cases, actual title and/or possession of the product may pass directly from the vendor to the third-party distributor.

Persons exchanging fungible products often do so on a regular and continuing basis to cover shortages occurring because of a lack of storage or production facilities, and/or to affect savings in transportation costs. Exchanges may be carried as loans on the book of accounts (in which case the exchanges are often referred to as "inter-company loans"). Products acquired via an exchange may or may not be carried as regular inventory on the books of account.

May an exchange of fungible products qualify as an accommodation sale? The fact that the product sold is a fungible product does not preclude a claim that the sale is exempt as an accommodation sale. However, such a claim will be recognized only if the requirements as set forth above in this rule are met.

Revised November 15, 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1. 1966 (Old Rule #190)



RULE 209

FARMING FOR HIRE AND HORTICULTURAL SERVICES PERFORMED FOR FARMERS

"Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to: a product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; turf; or any animal including, but not limited to, an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal. "Agricultural product" does not include animals intended to be pets and does not include marijuana as defined by RCW 69.50.101(t).

"Farmer" means any person engaged in the business of growing, raising, or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product to be sold. "Farmer" does not include a person growing, raising, or producing such products for the person's own consumption; a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard or a slaughter or packing house; or a person in respect to the business of taking, cultivating, or raising timber. TMC 6A.30.030.

"Horticultural services" include services related to the cultivation of vegetables, fruits, grains, field crops, ornamental floriculture, and nursery products. The term "horticultural services" includes, but is not limited to, the following:

- Soil preparation services such as plowing or weed control before planting;
- Crop cultivation services such as planting, thinning, pruning, or spraying; and
- Crop harvesting services such as threshing grain, mowing and baling hay, or picking fruit.

Service and Other Activities. Persons performing horticultural services for farmers are generally subject to the service and other business activities business and occupation tax upon the gross proceeds.

The extent to which horticultural services are performed for others is determinative of whether or not they are considered taxable business activities. Persons who advertise or hold themselves out to the public as being available to perform farming for hire will be considered as being engaged in business. For example, a person who regularly engages in baling hay or threshing grain for others is engaged in business and taxable upon the gross proceeds derived therefrom, irrespective of the amount of such business or that this person also does some farming of his or her own land.

Retailing. If a person providing horticultural services also sells tangible personal property for a separate and distinct charge, the charge made for the tangible personal property will be subject to retailing business and occupation tax, depending on the nature of the sale.

Farmers who sell nonagricultural products or sell agricultural products that the seller has not grown, raised, or produced upon the seller's own land or upon land in which the seller has a present right of possession or sell animals or substances derived from animals in connection with the business of operating a stockyard, slaughterhouse, or packing house are subject to the retailing tax classification.

Exemption. A farmer is not subject to business and occupation tax upon sales of fruits, vegetables, berries, butter, eggs, fish, milk, poultry, meats or any other agricultural products which have been raised, caught, produced or manufactured by them upon land owned or leased to them. This exemption does not extend to sales, nor to the taking, cultivating or raising of Christmas trees or timber.

A farmer who occasionally assists another farmer in planting or harvesting a crop is generally not considered to be engaged in the business of performing horticultural services. These activities are generally considered to be casual and incidental to the farming activity. For example, a farmer owning baling equipment which is used primarily for baling hay produced by the farmer, but who may occasionally accommodate neighboring farmers by baling small quantities of hay produced by them, is not considered to be in business with respect thereto.

Revised November 14, 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #191)

RULE 211

LEASES OR RENTALS OF TANGIBLE PERSONAL PROPERTY, BAILMENTS

"Leasing" and "renting" are used interchangeably and refer generally to the act of granting to another the right of possession to and use of tangible personal property for a consideration.

"True lease" or "operating lease" refers to the act of leasing property to another for consideration with the property under the dominion and control of the lessee for the term of the lease with the intent that the property may revert back to the lessor at the conclusion of the lease.

"Financing lease" typically involves the lease of property for a stated period of time with the ownership transferring to the lessee at the conclusion of the lease for a nominal or minimal payment. The transaction is structured as a lease, but retains some elements of an installment sale. Financing leases will generally be taxed as installment sales. The presence of some or all of the following factors indicates a financing lease with the transaction treated as an installment sale (see Rule 198):

1. The lessee is given an option to purchase the equipment, and, if so, the option price is nominal (sometimes referred to as a "bargain purchase option");
2. The lessee acquires the equity in the property at the end of the lease agreement;
3. The lessee is required to bear the entire risk of loss;
4. The lessee pays all the charges and taxes imposed on ownership;
5. There is a provision for acceleration of lease payments; or
6. The property was purchased specifically for lease to this lessee.

Retail Service. Persons renting or leasing tangible personal property are taxable under the service retail classification upon the gross income from rentals as of the time the rental payments fall due.

Persons who rent equipment or other tangible personal property and, in addition, operate the equipment or supply an employee to operate the same are also subject to the business and occupation tax under the retail service classification.

When tangible personal property is rented or leased, the "selling price" includes all charges to the renter or lessee for the use of the property rented or leased, including charges designated as insurance, interest, penalty and other costs recovered stated separately from the regular rental or lease fee.

When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" must be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character.

Retailing. The residual purchase amount on leases containing an option to purchase which is subsequently exercised by the lessee constitute "sales" and should be reported under the retailing classification.

Examples. The following examples give a number of facts and then state the conclusion as to the classification the activity is taxable under.

A.) True Lease: ABC Auto Manufacturer enters in a leasing agreement with Jane Doe. The lease agreement is for a term of three years with an option to purchase at the conclusion of the lease for market value. All income received from this lease would be taxable under the service retail classification.

B.) Using the same information from example A.) Jane Doe elects to purchase the property after the three year lease for $5,000. The $5,000 paid by Jane Doe at this time would be taxable under the retailing classification.

C.) Financing Lease: AAA Financing enters in a leasing agreement with XYZ Construction for a lease of a dump truck with an initial cost of $30,000. The lease agreement is for five years and has an option to purchase at the conclusion of the lease for $1.00. AAA Financing would report the cost of the equipment ($30,000) in the period the lease was signed under the retailing classification (see Rule 198). Any interest, penalties or other fees received after the lease signing would be taxable under the service and other classification (see Rule 109).

Revised February 24, 2015
Revised March 30, 2012
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #192)

RULE 213

OIL COMPANY BULK STATION AGENTS

Persons operating oil company bulk stations under a commission agency agreement, billing in the name of the company they represent, hiring and paying employees or assistants, providing and maintaining trucks or other equipment, are considered independent agents engaging in the business of distributing gas and oil rather than employees and are taxable under the service and other classification of the business and occupation tax upon gross commissions.

Such persons are required to obtain a separate certificate of registration even though a branch certificate has been obtained for them by the oil company they represent, due to the fact that the oil company reports the wholesale sales made by such persons. Persons operating bulk stations under a commission agency agreement, who bill in their own name rather than in the name of the company they represent, are taxable as sellers either at wholesale or at retail, depending on the nature of the sales made.

Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #194)

RULE 214

COOPERATIVE MARKETING ASSOCIATIONS AND INDEPENDENT DEALERS ACTING AS AGENTS OF OTHERS WITH RESPECT TO THE SALE OF FRUIT AND PRODUCE

Person engaged in the business of buying and selling fruit or produce, as agents of others, and also in the business of washing, sorting, packing, warehousing, storing, or otherwise preparing for sale the fruit and produce of others, and activities incidental thereto, are taxable under the provisions of the business and occupation tax. Tax is due on the business activities of such persons, irrespective of whether the business is conducted as a cooperative marketing association or as an independent produce agent.

Retailing. The sale of ladders, picking bags, and similar equipment, sold for consumption are taxable under the retailing classification.

Wholesaling. The sale of boxes, nails, labels and similar supplies sold to growers for their use in packing fruit and produce for sale and;
The sale of insecticides used as spray for fruits and produce are taxable under the wholesaling classification.

Service and Other Activities. The following activities are taxable under the service and other activities classification:

1. Commissions for buying or selling;
2. Charges made for interest, no deduction being allowed for interest paid;
3. Charges for handling;
4. Charges for warehousing (but see Rule 182 for Public Warehouses);
5. Charges for receiving, washing, sorting, and packing of fresh perishable horticultural products and the material and supplies used therein, when performed for persons other than the grower thereof;
6. Rentals of cold storage lockers and cold storage warehousing; and
7. Other miscellaneous charges, including analysis fees, but excluding actual charges made for foreign brokerage and bona fide charges for receiving, washing, sorting and packing fresh perishable horticultural crops and the materials and supplies used therein when performed for the grower, either as agent or independent contractor.

Deductions. Where a seller performs packing services for the grower and furnishes the materials and supplies used therein, the amount of the charge therefor is deductible, even though the boxes and other packing material are loaned or charged to the grower prior to the time the fruit or produce is received for packing, provided that the boxes and packing materials are returned by the grower to the seller for use in packing fruit and produce for the grower.

Warehousing. Taxable with respect to gross income from cold storage warehousing, but not including the rental of cold storage lockers(See Rule 182).

Revised November 14, 2013
Revised November 23, 2010
Revised January 1, 1984
Adopted January 1, 1976

RULE 215

AUDITING OUT-OF-CITY BUSINESS

Whenever it appears from a review of the returns filed by any out-of-city taxpayer, that an audit of the books and records is necessary, a notice will be sent to the taxpayer asking the taxpayer to select one of the following methods for the audit:

1. If complete records are maintained by the taxpayer within a 50 mile radius of the City of Tacoma the taxpayer may elect to have the audit conducted at the place where the records are maintained.
2. If complete records are not maintained by the taxpayer within a 50 mile radius of the City of Tacoma the taxpayer may elect to bring the records to Tacoma and the audit will be conducted at the office of Tax and License.
3. If complete records are not maintained by the taxpayer within a 50 mile radius of the City of Tacoma and the taxpayer does not desire to submit such records for audit at the office of Tax and License, the taxpayer may elect to have the audit made by a Tax & License Auditor or contractor designated by the City at the place where such records are kept.

In the event the taxpayer elects to have the audit made as provided under method "3" they should so advise the Tax & License division and signify their willingness to pay all the expenses incurred by the City in conducting the audit. Such expenses would include: travel, lodging, meals, etc., but would not include the salary of the Tax & License staff person or contractor.

Revised December 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #195)

RULE 216

SUCCESSORS, QUITTING BUSINESS

"Intangible assets" include, but are not limited to, all monies and credits including mortgages, notes, accounts, certificates of deposit; tax certificates; judgments; state, county and municipal bonds; bonds of the United States and of foreign countries; bonds, stocks, or shares of private corporations; personal service contracts; trademarks; trade names; brand names; patents; copyrights; trade secrets; franchise agreements; licenses; permits; core deposits of financial institutions; noncompete agreements; business name; telephone numbers and internet addresses; customer or patient lists; favorable contracts and financing agreements; reputation; exceptional management; prestige; good name; integrity of a business; or other intangible personal property.

“Successor” means any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of business of the taxpayer’s business, any part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the taxpayer. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

A person, however, is not a "successor" if the person acquires the tangible or intangible assets of the taxpayer through insolvency proceedings, regular legal proceedings to enforce a lien, security interest, or judgment, or by repossession under a security agreement.

"Tangible assets" include, but are not limited to, materials, supplies, merchandise, inventory, equipment, or other tangible personal property.

A person to whom business property is sold or transferred, or who is obligated to perform the terms of a contract, may be liable to pay the transferor’s or contractor’s tax liability even if the taxes have not yet been assessed. If the criteria for liability are met, such person becomes a “successor” and is jointly and severally liable with the taxpayer to pay the tax. The Director may collect the tax from either the successor or the taxpayer, and is not required to first attempt collection from the taxpayer.

Taxpayer’s obligations. Whenever any taxpayer quits business, sells out, exchanges, or otherwise disposes of the tangible or intangible assets of the business or stock of goods, any tax payable hereunder shall become immediately due and payable. Such taxpayer shall, within 10 days thereafter, make a return and pay the tax due.

Successor’s obligations. The successor must notify the Director in writing of the date of the transfer or default. The written notice must contain the following information:

- The (predecessor) taxpayer's name, business name, address, and UBI number;

- The successor's name, business name, address, and UBI number;
- The date of the acquisition;
- Whether or not the successor acquired any part of the materials, supplies, merchandise, inventory, fixtures or equipment of the (predecessor) taxpayer;
- A description of the assets acquired and their estimated fair market value;
- The total costs of acquisition; and how the person became a successor (i.e., asset purchase, merger, guarantor of a defaulting contractor, etc.).

Any person who becomes a successor shall become liable for the full amount of any tax owing. The successor shall withhold from the purchase price a sum sufficient to pay any tax due to the City from the taxpayer until such time as: (1) the taxpayer shall produce a receipt from the City showing payment in full of any tax due or a certificate that no tax is due; or (2) more than 6 months has passed since the successor notified the Director of the acquisition and the Director has not issued and notified the successor of an assessment.

Payment of the tax by the successor shall, to the extent thereof, be deemed a payment upon the purchase price. If such payment is greater in amount than the purchase price, the amount of the difference shall become a debt due such successor from the taxpayer.

Examples. The following factual situations illustrate the application of the foregoing.

1. Taxpayer sells business and stock of goods. Purchaser is the successor.
2. Taxpayer sells stock of goods in bulk. Purchaser is the successor, even though taxpayer continues in business through purchase of new stock.
3. Taxpayer sells business, including fixtures, good will, etc., to one party and the stock of goods to another. Both purchasers are successors.
4. Taxpayer sells one branch of the business and stock of goods, and continues to carry on their business at other locations. Purchaser is successor to the portion of the business purchased and liable for any tax incurred in the operation of that business.
5. Taxpayer leaves business, including fixtures and stock of goods, which his or her landlord holds for unpaid rent. The landlord will be a successor unless he or she proceeds to foreclose the landlord's lien by posting notice and holding a sale by the sheriff.
    a. If the landlord, instead of foreclosing the lien, takes a bill of sale to all of the taxpayer's interest in the business or stock of goods in satisfaction of rent, they would be a successor.
    b. If the landlord fails to foreclose the lien and sells the fixtures or stock of goods and the purchaser continues the business or a similar business, the purchaser is a successor.

   c. If the taxpayer does not leave any fixtures or stock of goods and the landlord engages in a like business in the same location or rents to a third person, neither the landlord nor the third person would be a successor.
6. Taxpayer purchases business, equipment, or stock of goods under a security agreement and the property is repossessed by the vendor, the vendor is not a successor.
   a. If the vendor sells to a third person who continues the business, the third person is not a successor.
   b. If the taxpayer sells the equity under the security agreement to a third person, the third person is a successor.
   c. If the property is not repossessed and the vendor buys back the interest of the taxpayer, the vendor is a successor, and any third person who purchases the same from such vendor and continues the business is also a successor.
7. Taxpayer dies or becomes bankrupt, goes into receivership, or makes an assignment for the benefit of creditors.
   a. The executor, administrator, trustee, receiver, or assignee is not a successor but stands in the place of the taxpayer and is responsible for payment of tax out of the proceeds derived upon disposition of the assets.
   b. A purchaser from the executor, administrator, trustee, receiver, or assignee is not a successor, unless under the terms of the purchase agreement he assumes and agrees to pay taxes and/or lien claims.
8. Taxpayer is a contractor and is required to post a bond to insure completion of the contract. Taxpayer defaults on the contract and the bonding company completes it. The bonding company is a successor to the contractor to the extent of the contractor's liability for that particular contract and is also liable for taxes incurred in the completion of the contract.

Revised September 30, 2014
Revised November 14, 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #196)

RULE 218

ADVERTISING AGENCIES

Advertising agencies are primarily engaged in the business of rendering professional services, but may also make sales of tangible personal property to their clients or others or make purchases of such articles as agents on behalf of their clients. Articles acquired or produced by advertising agencies may be for their own use in connection with the rendition of an advertising service or may be for resale as tangible personal property to their clients.

Service and Other Activities. The gross income received for advertising services, including commissions or discounts received upon articles purchased as agents on behalf of clients, is taxable under the service and other activities classification. (See Rule 144 for discounts attributable to sales of tangible personal property, unless charges for such articles are separately stated in billings rendered to clients).

Retailing/Wholesaling. The retailing or wholesaling classification applies to articles of tangible personal property sold to persons for whom no advertising service is rendered and also to charges to clients for such articles if separately stated from charges for advertising services in billings rendered.

Manufacturing. The manufacturing classification applies to articles manufactured for sale or commercial or industrial use (see Rule 134), and also to interstate sales of manufactured articles separately stated from advertising services.

Revised September 19, 2014
Revised November 14, 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #198)

RULE 219

PATRONAGE DIVIDENDS OF COOPERATIVE ASSOCIATIONS, NOT DEDUCTIBLE

Patronage dividends declared by cooperative selling associations or corporations and paid from the earnings of such associations of corporations are not deductible in computing tax liability under the business and occupation tax.

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Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #199)

RULE 222

VETERINARIANS

Veterinarians are primarily engaged in the business of rendering professional services, although many veterinarians, in addition to such services, also sell medicines and supplies for use in the care of animals.

“Veterinary services" includes the diagnosis, cure, mitigation, treatment, or prevention of disease, deformity, defect, wounds, or injuries of animals. It also includes the administration of any drug, medicine, method or practice, or performance of any operation, or manipulation, or application of any apparatus or appliance for the diagnosis, cure, mitigation, treatment, or prevention of any animal disease, deformity, defect, wound, or injury.

"Veterinary services" does not include the therapeutic use of an item of personal property opened and partly administered by the veterinarian or by an assistant under his or her direction, and taken by the customer for further administration by the customer to the animal, provided the charge for the item is separately stated on the invoice.

Retailing. Gross income from the sale of drugs, medicines, or other substances or items of personal property to consumers when the sale is not part of veterinary services. The retailing classification applies only when the veterinarian does not administer, or only administers part of the drug, medicine, or other substance or item of personal property to the animal with further administration to be completed by the customer. Adequate records must be kept by the veterinarian to distinguish drugs, medicines, or other substances or items of personal property that are administered as part of veterinary services from those that are sold at retail.
Gross income from the sale of tangible personal property for which there is a separate and distinct charge, when sold by persons providing grooming, boarding, training, artificial insemination, stud services, or other services for live animals.

Wholesaling. Sales to veterinarians and others who purchase tangible personal property for the purpose of resale in the regular course of business without intervening use by the buyer are sales at wholesale, and not subject to the retail sales tax.

Service and Other Activities. Gross income derived from veterinary services. The gross income derived from veterinary services includes the amount paid by a customer for any drug, medicine, apparatus, appliance, or supply administered by the veterinarian or by an assistant under his or her direction, even when the charge is separately stated on the invoice from charges for other veterinary services.

Gross income derived from grooming, boarding, training, artificial insemination, stud services or other services provided to live animals.

Revised November 21, 2013
Revised November 23, 2010

Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #201)

RULE 223

PERSONS PERFORMING CONTRACTS ON THE BASIS OF TIME AND MATERIAL, OR COST-PLUS-FIXED-FEE

Persons performing contracts on the basis of time and material, or cost plus fixed fee are subject to business and occupation tax in accordance with the following:

- Manufacturing or Processing for Hire, Rule 136;
- Constructing and Repairing of New or Existing Buildings, Rule 170;
- Building or Improving of Publicly Owned Roads, etc., Rule 171;
- Contracts involving only the Grading and Clearing of Land, Rule 172; and,
- Service and Other Activities, Rule 224.

The measure of the tax under each of the foregoing types of contracts is the amount of profit or fixed fee received, plus the amount of reimbursements or prepayments received on account of sales of materials and supplies, on account of labor costs, on account of taxes paid, on account of payments made to subcontractors, and on account of all other costs and expenses incurred by the contractor, plus all payments made by the contractor's principal direct to a creditor of the contractor in payment of a liability incurred by the contractor.

Revised November 26, 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1976
Adopted January 1, 1966 (Old Rule #202)

RULE 224

SERVICE AND OTHER ACTIVITIES

The Tacoma Municipal Code Title 6A imposes a tax upon every person for the privilege of engaging in business in this city. Persons engaged in the following specifically named business activities are subject to a tax which is measured by value of products, gross proceeds of sales or gross income of the business: extracting, manufacturing, retailing, wholesaling, printing and publishing, international investment management services, retail services, service and other activities and building and repairing of publicly owned streets and roads. All business activities which are not specifically identified in the TMC as reportable under any of these tax classifications and all services not specifically classified elsewhere in the code are reportable under the service and other business activities classification.

The term "personal or professional services," as used herein, refers generally to the activity of rendering services to persons as distinct from making sales of tangible personal property or the providing of services which have been defined in the code as a "retail service," "sale" or "sale at retail." (See TMC 6A.30.040 or 6A.30.050.)

Examples of persons rendering professional or personal services to persons (as distinguished from services rendered to personal property of persons) such as accountants, aerial surveyors and map makers, agents, ambulances, appraisers, architects, assayers, attorneys, auctioneers, automobile brokers, barbers, baseball clubs, beauty shop owners, brokers, chemists, chiropractors, collection agents, community television antenna owners, court reporters, dentists, detectives, employment agents, engineers, financiers, funeral directors, garbage collectors, hospitals, janitors, kennel operators, laboratories, landscape architects, loan agents, medical service providers, motor carriers other than freight haulers, music teachers, oculists, orchestra or band leaders contracting to provide musical services, physicians, real estate agents, school bus operators, schools, stenographers, warehouses, teachers, theaters, travel agencies, undertakers, veterinarians, and persons engaged in other similar professions or services.

Service and Other. Persons engaged in rending personal or professional services, or any business activity other than, or in addition to, those for which a specific rate is provided in TMC 6A.30, are taxable under the service and other business activities classification upon the gross income from such business.

The service and other activities classification does not apply to persons engaged in the business of cleaning, repairing, improving, etc., the personal property of others, such as automobile, house, jewelry, radio, refrigerator and machinery repairmen, laundry or dry cleaners. Also, it does not apply to certain personal and professional services specifically included within the definition of the term "sale at retail" in TMC 6A.30.030, such as amusement and recreation businesses of a participatory nature; abstract, title insurance and escrow businesses, credit bureau businesses, automobile parking and storage garage businesses. Furthermore, it does not include persons who render

services to others in the capacity of employees as distinguished from independent contractors.

There must be included within gross income amounts reported for tax all fees for services rendered and all charges recovered for expenses incurred in connection with the services rendered, such as transportation costs, lodging, meals, and telecommunications charges, etc. Persons engaged in a personal service business and selling articles of tangible personal property apart from the rendition of personal services shall report those sales separately under the retailing or wholesaling classification--whichever applies.

Revised September 9, 2014
Revised March 16, 2012
Revised January 1, 1984
Adopted January 1, 1976

RULE 226

LANDSCAPE GARDENERS

Retailing. The business of landscape gardening ordinarily includes one or more of the following activities which are reported as retail sales:

- The performance of contracts for grading, filling, leveling and planting of yards, lawns, and grounds, excepting the mere leveling of land used in commercial farming or agriculture.
- The sale of ornamental trees, plants, shrubs, etc.
- The performance of contracts for the construction of structures, such as walks, pools, fences or trellises, rockeries and retaining walls.

Retail Service. Gross income received from landscape and horticultural services when performed for the consumer, such as:

- The maintenance of lawns and gardens, renting, maintaining or watering plants, including grass cutting, hedge trimming and the pruning of trees and shrubs.
- The planting of ornamental trees, plants, shrubs, etc., if stated separately on the invoice.

Wholesaling. Gross income received from the above landscape and horticultural services when performed for other contractors for resale.

Exemptions.

(a) Gross income received from horticultural services provided to farmers.
(b) Gross income received from pruning, tree trimming, removing and clearing of trees and brush near electric lines, if performed by or at the direction of an electric utility.

Revised March 11, 2015
Revised November 23, 2010
Revised January 1, 1984
Adopted January 1, 1976

RULE 227

SUBSCRIBER TELEVISION SERVICES

"Subscriber television" refers to all businesses providing television programming to consumers for a fee. It includes, but is not limited to, cable television and satellite television. Subscriber television often transmits to its customer's special channels offering a variety of programming such as movies, sporting events, children's entertainment, news and other informational services.

"Fee" includes the amount paid by the subscriber to receive the subscription television service. Generally, the fee consists of an amount for installation and a monthly charge for maintenance or service

Gross income derived from the charge made for installation and the monthly rental or service fee is subject to tax under the classification service and other activities. (See Rule 224)

Gross income derived from advertising revenues is subject to tax under the classification radio and television broadcasting. (See Rule 241)

No deductions from gross income may be taken for affiliate fees, video service fees, satellite fees, copyright fees, or any other amounts paid to other firms for special programming provided to subscribers.

Revised November 26, 2013
Revised November 23, 2010
Revised January 1, 1984
Revised January 1, 1982
Adopted January 1, 1976

RULE 229

CORRECTIONS/REFUNDS PROCEDURES

Petitions for correction of assessment shall be in writing and shall set forth the reasons why the correction should be granted and the amount of tax or of interest and penalties, as the case may be, which the petitioner believes to be due.

Any person having paid any tax, original assessment or corrected assessment of any tax may apply to the Department within the time limitation for refund provided in TMC 6A.10.100 by petition in writing for a correction of the amount paid and a conference for examination and review of the tax liability.

Statute of limitations for refunds or credits.

(a) With the exception of (b) of this subsection, no refund or credit may be made for taxes, penalties, or interest more than four years prior to the beginning of the calendar year in which a refund application is made or examination of the records is completed.

(b) The execution of a written waiver will extend the time for applying for or making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the Director discovers that a refund or credit is due.

Refund/credit procedures. Refunds are initiated in the following ways:

(a) Division review. When the Division audits or examines the taxpayer's records and determines the taxpayer has overpaid its taxes, penalties, or interest, the Division will issue a credit.

(b) Taxpayer request. When a taxpayer discovers that they have overpaid taxes, penalties, or interest, they may file an amended return or a petition for a refund or credit with the Division. The application must be submitted within the statute of limitations.

Applications are subject to verification by examination of the taxpayer's records. The taxpayer must state in their written application the reason(s) why a credit or refund is warranted. If the Division needs additional information to verify the overpayment, the Division will request that additional information from the taxpayer.

(c) Application or payment of credit. A credit will be applied first against delinquent obligations, if any. Any balance will be credited to the taxpayer’s account or refunded to the taxpayer. Refunds are made by means of vouchers approved by

the Director and by the issuance of a City check or warrant drawn upon and payable from such funds as the City may provide.

(d) Court decision. Any final judgment for which a recovery is granted by any court of competent jurisdiction for tax, penalties, interest, or costs paid by any person will be paid in the same way as subsection (c) of this section when the decision of the court is not being appealed and when the taxpayers files a certified copy of the order or judgment of the court with the Director.

Petitions for refund shall be in writing and shall set forth the amount of the tax believed to have been overpaid, the date of payment, the periods for which such tax was paid and the reasons why the petitioner believes that a refund should be granted.

The Department shall notify the taxpayer in writing within 10 business days that the petition for refund was received. The refund petition will be assigned to a Tax & License Field or Office Auditor for review. The auditor will request more information from the taxpayer if needed to determine the validity of the request. Once all of the information is received the Department will issue a determination within 30 days, and shall advise the taxpayer, in writing, whether the petition for refund is granted, denied or modified.

Any taxpayer may petition the Department for a prior determination of tax liability. Such a petition shall contain all pertinent facts concerning the question presented and may contain a statement of the taxpayer's views concerning the correct application of the law. The Department may grant or deny a conference with respect to such petition but shall advise the taxpayer, in writing, of its determination. Such determinations shall be binding upon both the taxpayer and the Department under identical facts, and any future changes in such determination shall have prospective application only.

Refund Processing. Refunds can generally be processed faster if the taxpayer provides the following information at the time a written refund application is made:

(a) The taxpayer should include his or her contract number on all documents.
(b) The taxpayer should include the telephone number and name of the person the Department should contact in case the Department needs additional information or has questions.
(c) Amended **tax** returns or worksheets should be attached to the refund or credit application and clearly identify the **tax** reporting periods involved.

Interest. Interest on overpayments of taxes are as follows:

(a) For reporting periods beginning on or after January 1, 2005 interest shall be computed in accordance with RCW 82.32.060 as it now exists or as it may be amended.

(b) For reporting periods beginning on or after January 1, 2003 and prior to December 31, 2004 interest shall be at the federal short term rate as outlined for assessments in Section 6A.10.090.B.3 less 2 percentage points.

Revised August 16, 2010
Revised December 18, 2007
Passed November 23, 2004

RULE 233

TAX LIABILITY OF MEDICAL AND HOSPITAL SERVICE BUREAUS AND ASSOCIATIONS AND SIMILAR HEALTH CARE ORGANIZATIONS

Service and Other. All medical service bureaus, medical service corporations, hospital service associations and similar health care organizations engaging in business within this city are subject to the provisions of the business and occupation tax and are taxable under the service and other classification upon their gross income. The term "gross income" as in TMC 6A.10.020 is construed to include the total contributions, fees, premiums or other receipts paid in by the members or subscribers. Insofar as tax liability is concerned it is immaterial that such organizations may be incorporated as charitable or nonprofit corporations.

Certain of these organizations operate under contracts by the terms of which the bureau or association acts solely as the agent of a physician, hospital, or ambulance company in offering to its members or subscribers medical and surgical services, hospitalization, nursing, and ambulance services. In computing tax liability such bureaus and associations therefore, will be entitled to deduct from their gross income the amounts paid to member physicians, hospitals and ambulance companies. No deduction will be allowed with respect to amounts retained as surplus or reserve accounts or to amounts expended for the purchase of supplies or for any other expense of the bureau or association other than as provided herein.

Under contracts wherein these organizations furnish to their member's medical and surgical, hospitalization and ambulance services as a principal and not as an agent, no such deduction is allowed.

Revised May 25, 2016
Revised November 26, 2013
Revised November 23, 2010
Revised January 1, 1984
Adopted January 1, 1976

RULE 236

BASEBALL CLUBS AND OTHER SPORT ORGANIZATIONS

Baseball clubs and other sport organizations are taxable under the classification of service and other upon the total income derived from games for which such clubs are the sponsors or hosts, even though a fixed amount or a certain percentage of such income is paid to another team or club.

Conversely, amounts received by baseball clubs or other sport organizations as their share of the proceeds from games for which they are not the sponsor or host may be excluded from the measure of tax.

Revised November 23, 2010
Revised January 1, 1984
Adopted January 1, 1976

RULE 238

SALES TO NONRESIDENTS OF WATERCRAFT

The term "Coast Guard registration," in addition to its ordinary meaning, will include registration and numbering by the state of principal use when this function has been assumed by the state under the Federal Boating Act of 1958.

Retail. All sales of watercraft to consumers if delivery is made within the City of Tacoma, even though the sale may qualify for an exemption from the retail sales tax are taxable under the retail classification. If the seller also manufactures the vessel in Tacoma, the seller must report under both the manufacturing and wholesaling or retailing classifications of the business and occupation tax, and claim a multiple activities tax credit (MATC). Manufacturers should also refer to Rule 136 (Manufacturing, processing for hire, fabricating).

In computing tax under the retail classification, no exemption or deduction is allowed by reason of the fact that watercraft requiring Coast Guard registration are sold to nonresidents for use outside this state

Revised November 13, 2013
Revised November 23, 2010
Revised January 1, 1984
Adopted January 1, 1976

RULE 241

RADIO AND TELEVISION BROADCASTING

"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.

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

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

"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.

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

Retailing or wholesaling. Taxable on gross proceeds of sales of tangible personal property, including gross proceeds from sales of films and tape produced for general distribution and from sales of copies of commercials, programs, films, etc., even though the original was not subjected to sales tax. The sale of custom-made programs, commercials, films, etc., is not taxable under this classification.

Service and other activities. Taxable on gross income from personal or professional services, including gross income from producing and making custom commercials or special programs, fees for providing writers, directors, artists and technicians, charges for the granting of a license to use facilities and charges to other broadcasters for the mere right to broadcast material on processed film, sound recorded magnetic tape, and other transcriptions when the material is returned to the original broadcaster.

Manufacturing. Taxable on the cost to produce special programs, such as public affairs, religious, travelogues, and other general programming, which are vended to other broadcasters under a lease or contract granting a mere license to use. This 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.

Revised November 26, 2013
Revised November 23, 2010
Revised January 1, 1984
Adopted January 1, 1976

RULE 242

TELECOMMUNICATIONS SERVICE, TELEPHONE BUSINESS, AND NETWORK TELEPHONE SERVICE

Introduction. This rule explains the taxation of persons engaged in telephone business, including the rendering of telecommunications services or other electronic data transmission services to customers in Tacoma. Generally, telecommunications service, telephone business, or telephone service includes, but is not limited to, ancillary services, data transmission, mobile telecommunication services, voice over internet protocol (VOIP), pager services, and any other transmission of electronic signals or data over lines, fiber, cable, or through the air. Persons engaged in "telecommunication services", "telephone business", or rendering "telephone service" are taxable under the telephone utility classification of the Tacoma business utility tax, on total gross revenues, as described herein. This rule also includes how telecommunication services, or telephone business is sourced, and the taxation of bundled services.

"Ancillary services" mean services that are associated with the provision of telephone services, telephone business, or telecommunications services, including but not limited to directory assistance, vertical service, caller ID, Call waiting, and voice mail services.

"Bundled transactions" means the sale of two or more services, where (1) the services are otherwise distinct and identifiable, and (2) the services are sold for one non-itemized price.

"Call-by-call basis" means any method of charging for telephone services where the price is measured by individual calls.

"Cellular telephone service" is a voice or data telephone/telecommunications system based in whole or substantially in part, on wireless radio communications, which is not subject to regulation by the Washington Utilities and Transportation Commission (WUTC). This includes cellular mobile service. Cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications technology which accomplishes the same purpose as cellular mobile service.

Examples of such services are paging and beeper services, mobile radio services, wireless services including cellular roaming services, and air-to-ground telephone service. Mobile telecommunications services do not only include transmission services for voice communications but also include transmissions of other types of content including data or video as in text messaging.

"Communications Channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

"Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which may be provided by persons not subject to regulation as telephone companies under RCW Title 80, and for which a separate charge is made.

"Customer Channel Termination Point" for purposes of a private line communication service, means the location where the customer either inputs or receives the communications.

"Internet access provider (IAP)" is an entity that provides individuals and internet service providers access to the internet. An IAP has the equipment and the telecommunication line access required to create a point of presence (POP) on the internet for individuals within a geographic area. The IAP controls the assignment of domain names and other identifying characteristics which provide a specific address to each person using the internet. Generally, individuals and small businesses receive their POP through their internet service providers who in turn received the POP from an IAP.

"Internet service" means a service that includes computer processing applications that provide the user with additional or restructured information, or permits the user to interact with stored information through the internet or a proprietary subscriber network. "Internet service" includes provision of homepage, internet electronic mail, access to the internet for information retrieval, and hosting of information for retrieval over the internet or the graphical sub-network called the World Wide Web.

"Mobile telecommunications services" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes:

(i) Both one-way and two-way radio communications services;
(ii) A mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and
(iii) Any service for which a license is required in a personal communications service under part 24 of Section 20.3, Title 47 Code of Federal Regulations ("CFR") 1999. "Mobile telecommunications service" is commonly referred to as cellular telephone or wireless service.

"Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

"Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service.

"Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number and/or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount. For example, calling cards purchased at a retail outlet are a "prepaid calling service."

"Private communication service" commonly referred to as "private line" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points. This includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. Virtual private network services, frame relay services, and dedicated access lines are examples of private communications services.

"Telecommunication services", "telephone business", or "telephone services" are broadly defined terms, and synonymous to each other, and mean the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. It includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added.

Telecommunication services also includes ancillary services that are associated with or incidental to the provision of telecommunication services including, but not limited to, conference bridging, detailed telecommunications billing, directory assistance, vertical service, or voice mail services, all as defined in RCW 82.04.065.

Telecommunication services, telephone business, or network telephone services also includes those activities previously used to define telephone business such as the providing by any person of access to a local telephone network, local telephone network switching service, toll service, cellular or mobile telephone service, pager service or the providing of telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. The term includes the provision of cooperative or farmer line telephone services or association operating exchanges. The term also includes the provision of transmission to and from the site of an internet provider via a

local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system.

"Telecommunication services", "telephone business," or "network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, or other providing of broadcast services by radio or television stations.

"Toll service" means the charge for services outside the local telephone network except customer access line charges for access to a toll calling network.

"Voice over Internet Protocol (VOIP)" is an internet protocol telephony term for a set of facilities used to manage the delivery of voice information over the internet. VOIP involves sending voice information in digital form and in discrete packets using internet protocols (addressing) rather than by using the traditional circuit-committed protocols of the public switched telephone network (PSTN).

Business Utility Tax. Persons engaged in providing "telecommunications services", "telephone business", or "network telephone service" are taxable based upon the gross proceeds of sales under the telephone business utility classification per TMC 6A.40.040. Telecommunication services are taxable services regardless of whether they are provided via land line, microwave, wireless, cable, fiber or similar technologies and include local, long distance, mobile, 800 or other services designated as toll free services. Telecommunication services also includes enhanced or value added services such as voice mail, caller Id, call waiting, message indicators, etc. The following list are examples of charges made to customers which are part of the gross charge for telephone services and are included in the measure of the Tacoma telephone utility tax regardless of whether such charges are separately itemized.

This list is not all inclusive.

(a) Connection and disconnection charges;
(b) Reconnect charges;
(c) Local telephone number portability charge;
(d) Minimum or fixed rate charges; commonly referred to as non-usage charges;
(e) Telecommunication nonrecurring and recurring charges;
(f) City of Tacoma Utility tax, or any other taxes or charges that do not qualify as trust taxes;
(g) Late charges; and
(h) VOIP charges.

The use of a coin-operated telephone by means other than coins is taxable under the telephone utility tax.

Retailing. The retailing business and occupation tax applies to competitive telephone service and is measured by the gross proceeds of sales of such competitive telephone service to customers. The tax shall be measured by total gross proceeds of sales to

customers in accordance with the provisions of TMC. The retailing business and occupation tax applies to sales of telecommunications service paid for by inserting coins in coin-operated telephones. The gross receipts from such sales should be reported under the retailing classification of the business and occupation tax and should be excluded from the measure of the telecommunication service utility tax.

The following are examples of activities taxable under the retailing or wholesaling classification of the business and occupation tax depending on whether the purchaser is a consumer or reseller, respectively.

(i) Sales of all items included in the definition of "Competitive Telephone Service".
(ii) Installation or maintenance of wiring or equipment at a customer's premises;
(iii) Sales of tangible personal property, such as phones; and
(iv) Digital products delivered electronically, including software, music, video, and reading materials, or ring tones.

Wholesaling. Gross income derived from charges to another telecommunications company for resale, as defined in RCW 80.04.010, for connecting fees, switching charges, carrier access, or other telephone service charges relating to intrastate toll telephone services, or for access to charges for, interstate services, are to be reported under the wholesaling classification. Items listed under the retailing classification in subsection (4) (a) above when sold to entities for resale to the end consumer are to be reported under the wholesaling classification.

Service and other activities classification. Persons engaged in telecommunication services, telephone business or rendering telephone services are taxable under the service and other activities classification of the business and occupation tax on their activities of selling directory advertising, services for the generation of specialized billing reports, data processing and information services, and billing and collection services provided to a third party. Also, persons engaged in internet access services prior to 07/01/2008. The gross receipts derived from engaging in such activities shall be reported under the service and other business classification.

Deductions. There may be deducted from the total gross income upon which the business and occupation tax or utility tax is computed:

a. Amounts derived from business which the City is prohibited from taxing under the Constitution or laws of the United States, the Constitution or laws of the state, or the Charter of the City;
b. Any amounts collected by the taxpayer as an excise tax (trust funds) and remitted to the taxing authority, including but not limited to the leasehold excise tax, retail sales and use tax.
c. Charges for the provision of interstate telephone service. The taxpayer is responsible for maintaining proper documentation and proof to establish the interstate charge. The taxpayer must be able to separately identify that portion of

telecommunication services or telephone business which qualifies as interstate calls and services.

d. Amounts, as applied only to cellular telephone service companies who keep their regular books of account on an accrual basis, for credit losses actually sustained and written off by a taxpayer as a result of cellular telephone service business.

Sourcing Rules. This section provides general sourcing rules for the provision of telecommunication services, telephone business, or network telephone service for purposes of the City of Tacoma telephone utility tax.

(a) Sourced to the place of primary use.

(i) Mobile telecommunications services are sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act (P.L. 106-252), passed by Congress in 2002. This includes cellular phone service charges that are computed on a flat monthly charge. This also includes any VOIP charges that are computed on a flat monthly basis when the service provider cannot provide documentation to show that the service originated or was delivered at a location other than the customer's place of primary use.

(ii) The sale of an ancillary service, such as voice mail, caller ID etc., is sourced to the customer's place of primary use.

(b) Sourced to where service is provided.

(i) Telecommunication services sold on a call-by-call basis shall be sourced to (A) the tax jurisdiction in which the call originates and terminates or (B) the tax jurisdiction in which the call either originates or terminates and in which the service address is also located. For example, if a customer places a phone call from Tacoma to a person in Bellevue, and the customer's service address is Tacoma, then the call is sourced to Tacoma.

(ii) Revenue received as a charge for a telephone call made by using a prepaid calling service shall be sourced to the origination point of the telecommunications signal, when first identified by either (A) the telecommunication service provider's telecommunications system, or (B) information received by the telecommunication seller from its telephone service provider, where the system used to transport such signals is not that of the telecommunication seller.

Where the taxpayer's equipment or system is unable to identify the origination point to enable sourcing as indicated above in this subsection, the taxpayer shall contact the Director for reporting instructions.

For purposes of the City of Tacoma telecommunications utility tax, the telecommunication provider whose name is on the prepaid calling card will be deemed to be the provider of the telephone service and treated as a telephone business and subject to the Tacoma utility tax. Gross receipts from retail sales of prepaid cards by other than telecommunication or telephone

phone businesses shall be reported under the retail classification of the business and occupation tax.

For example, Telecommunications Company A sells prepaid calling cards containing Company A's name on the face of the prepaid calling card to retail store XYZ. XYZ sells company A's prepaid calling cards to its customers. Telecommunications Company A is deemed to be the telecommunication or telephone business, and its gross income from providing the telecommunication service will be subject to the Tacoma utility tax. XYZ will be subject to the Tacoma business and occupation tax under the retail classification on the sale of the prepaid calling card to its customers.

(iii) Gross receipts for the charge for a telephone call using a post-paid calling service shall be sourced to the origination point of the telecommunications signal, when first identified by either (A) the telephone service provider's telecommunications system, or (B) information received by the telecommunication seller from its wholesale telephone service provider, when the system used to transport the signals is not that of the telecommunication seller.

(c) A sale of private communication service (private line, frame relay etc.), is sourced as follows:

(i) Service for a separate charge related to a customer channel termination point is sourced to the jurisdiction in which the customer channel termination point is located. For purposes of a private communication service, a customer channel termination point is the location where the customer either inputs or receives the communications.
For example, company A maintains a private line in Tacoma and has ancillary charges related to their customer channel termination points in Tacoma. These charges are sourced to Tacoma for purposes of the Tacoma utility tax.

(ii) Service charges where all customer termination points are located entirely within one jurisdiction will be sourced to that jurisdiction in which the customer channel termination points are located.
For example, company Z provides company XYZ with a private line. Company XYZ has four offices which are all located within Tacoma. Company Z will source all gross income from providing the private line to company XYZ to Tacoma for purposes of the Tacoma utility tax.

(iii) A service charge for a private line located in more than one jurisdiction is sourced to each jurisdiction based on the percentage of private line termination points in each jurisdiction divided by the total number of private line termination points. If the private line termination points are both within and without the state, the same sourcing rule applies
For example, Company TT provides Company SW with a private line. SW has offices located throughout Washington and Oregon. The private line crosses multiple jurisdictions and connects all of company SW's offices.

SW has 25 private line termination points located in Washington including 10 located in Tacoma. SW has another 15 private line termination points located in Oregon.
Company TT bills Company SW a single amount for providing the private line. SW will source 25% (10/40) of the private line charge to Tacoma.
Service charges for private lines that are subject to federal interstate tariffs will be considered an interstate charge.

Bundled Transactions. If a bundled transaction includes telecommunications or telephone services, and also internet services, the telecommunication utility tax will be calculated using the total price for the bundled products, unless the telecommunication seller can document from its books and records the portion of the sales price that represents the internet services. Telecommunication sellers, who as a part of their regular business practices, account separately in their books and records for the sales of the different products included in a bundled price, should only include in the measure of the utility tax the sales price allocated to the taxable telecommunications or telephone services in the bundled transaction. The separated non-telecommunication charge would be subject to the business and occupation tax. Sellers must use a reasonable method of allocation. Sellers that do not separately account for bundled products in their books and records must include the whole non-itemized price in the measure of the utility tax.

Effective date: January 31, 2008

RULE 247

TRADE-INS, SELLING PRICE

No deduction is allowed from the selling price or gross proceeds of sales for trade-ins. The term “selling price” means the full consideration, whether money, credits, rights or other property, or both, expressed in terms of money paid or delivered by a buyer to a seller without any deduction on account of the cost of tangible personal property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes other than sales tax imposed by the State of Washignton if the seller advertises the price as including the sales tax or that that seller is paying the sales tax, (see rule 107) or any other expenses whatsoever paid or accrued and without any deduction on account of losses.

Retailing. If traded-in property is subsequently resold at retail, the amount of such selling price must be reported by the seller as gross proceeds of sales.
To illustrate: An automobile is sold at retail for $1,000.00. The purchaser pays $600.00 in cash and is allowed $400.00 as the trade-in value of a used automobile. The selling price and the amount to be reported as gross proceeds of sales is $1,000.00. If the automobile traded in is later sold for $500.00, the amount of such selling price must be reported as gross proceeds of sales.

Adopted March 30, 2012 (Old Rule #107)

RULE 257

WARRANTIES AND MAINTENANCE AGREEMENTS

"Warranties" sometimes referred to as guaranties, are agreements which call for the replacement or repair of a purchased product with no additional charge for parts and/or labor based upon the happening of some unforeseen occurrence, e.g., the property needs repair within the warranty period.

"Warrantor is the person obligated, as specified in the warranty agreement, to perform labor and/or provide materials to the owner of the purchased product to which the warranty agreement relates.

"Maintenance agreements" sometimes referred to as service contracts, are agreements which require the specific performance of repairing, cleaning, altering, or improving of tangible personal property on a regular or irregular basis to ensure its continued satisfactory operation.

Service and Other Activities. Warranties which are sold by any person who was not the seller of the property protected by the warranty or which are purchased subsequent to and distinct from the original warranty purchased concomitant with the property, are deemed to be services rather than retail sales.

When a warranty is sold for a charge separately stated on the invoice from the charge for the product, e.g., a warranty extending the manufacturer's warranty, the charge is reported under the service and other classification.

Retailing. Maintenance agreements and service contracts require the periodic specific performance of inspecting, cleaning, physical servicing, altering, and/or improving of tangible personal property. Therefore, charges for contracts or agreements of this nature are retail sales, subject to business and occupation tax under the retail classification under all circumstances.

In the cases of both warranties and maintenance agreements, any actual additional charge made to the consumer because of the providing of materials or the performance of actual labor pursuant to such agreements is separately taxable under the retail classification. This includes so-called "deductible" amounts not covered by the warranty or service agreement.

Moreover, if an agreement contains warranty provisions but also requires the actual specific performance of inspection, cleaning, servicing, altering, or improving the

property on a regular or periodic basis, without regard to the operating condition of the property, such agreements are fully taxed as service agreements, not warranties.

When a manufacturer's warranty is included in the retail selling price of the property sold and no additional charge is made, the value of the warranty is a part of the selling price. The value of the warranty is included in the "gross proceeds of sale" of the article sold and reported under the appropriate classification, e.g. retail, wholesale, etc.

When a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale for the repair service to the warrantor. The person making the repair is liable for business and occupation tax under the retail classification.

Exemption. When a repair is made by the warrantor under a separately stated warranty, the value of the labor and/or parts provided are not subject to the B & O tax.

Revised December 2013
Revised April 25, 2012
Adopted January 1, 1966

RULE 260

WAIVER OF PENALTY

Waiver of a late payment of return or license penalty. The late payment of return or license penalty may be waived either as a result of circumstances beyond the control of the taxpayer or one time if a person meets certain criteria set out in TMC 6A.10.120.C

One time waiver. The Director may cancel the penalties imposed under TMC 6A.10.110.A one-time if a person:

1. Was not currently licensed nor have they ever been licensed with the City of Tacoma;
2. Was unaware of the person's responsibility to file and pay tax*; and
3. Made payment for the business licenses and filed past due tax returns within 30 days after being notified by the Department.

*Once the City notifies a taxpayer of their responsibility to obtain a license and file and pay tax, typically by sending the taxpayer a series of 3 letters notifying them of their requirements, the taxpayer is provided an opportunity (approx. 52 days from the date of the first letter) to register and avoid late filing penalties.

Circumstances beyond the control of the taxpayer. The Director may waive or cancel the penalties imposed under 6A.10.110.A of the TMC upon finding that the underpayment of the tax or fee, or the failure to pay any tax or fee by the due date, was the result of circumstances beyond the control of the taxpayer.

A. A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The taxpayer bears the burden of establishing that the circumstances were beyond its control and directly caused the late payment. The request must be made in writing.

B. The circumstances beyond the control of the taxpayer must actually cause the late payment. Circumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to timely file and pay. Circumstances beyond the control of the taxpayer include, but are not necessarily limited to, the following:

    1. The return payment was mailed on time but inadvertently sent to another agency.

    2. Erroneous written information given to the taxpayer by a Tax & License employee caused the delinquency. A penalty generally will not be waived when it is claimed that erroneous oral information was given by a City employee. The reason for not canceling the penalty in cases of oral information is because of the uncertainty of the facts presented, the

uncertainty of the instructions or information imparted by the employee, and the uncertainty that the taxpayer fully understood the information given. Reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of a penalty.

3. The delinquency was directly caused by death or serious illness of the taxpayer, or a member of the taxpayer's immediate family. The same circumstances apply to the taxpayer's accountant or other tax preparer, or their immediate family. This situation is not intended to have an indefinite application. A death or serious illness which denies a taxpayer reasonable time or opportunity to arrange timely filing and payment is a circumstance eligible for penalty waiver.

4. The delinquency was caused by the unavoidable absence of the taxpayer or key employee, prior to the filing date. "Unavoidable absence of the taxpayer" does not include absences because of business trips, vacations, personnel turnover, or terminations.

5. The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

6. The delinquency was caused by an act of fraud, embezzlement, theft, or conversion on the part of the taxpayer's employee or other persons contracted with the taxpayer, which the taxpayer could not immediately detect or prevent, provided that reasonable safeguards or internal controls were in place.

7. The City does not respond to the taxpayer's request for a tax return or license application within a reasonable period of time, which directly causes delinquent filing and payment on the part of the taxpayer. This assumes that, given the same situation, if the City had provided the requested form(s) within a reasonable period of time, the taxpayer would have been able to meet its obligation for timely payment of the tax or fee. In any case, the taxpayer has responsibility to insure that its form is filed in a timely manner (e.g., by keeping track of pending due dates) and must anticipatively request a form for that purpose, if one is not received.

C. The following are examples of circumstances that are generally <u>not</u> considered to be beyond the control of the taxpayer and will not qualify for a waiver or cancellation of penalty.

1. Financial hardship.

2. The failure of the taxpayer to receive a form, EXCEPT where the taxpayer timely requested the form and it was still not furnished in reasonable time to mail the return or license and payment by the due date.

3. Reliance upon unpublished, written information from Tax & License that was issued to and specifically addresses the circumstances of some other taxpayer.

Adopted April 1, 2014

RULE 274

STAFFING SERVICES

This rule explains the application of business and occupation tax responsibilities of businesses providing staffing services.

“Staffing business” is a business engaged in the activity of providing staffing services.

“Staffing services” means services consisting of a person:

1. Recruiting and hiring its own employees to provide short term or temporary help for others businesses and organizations;
2. Finding other organizations that need the services of its employees;
3. Assigning its employees on a temporary basis to perform work at, or services for, other organizations to support or supplement the organizations work force, or to provide assistance in special work situations such as, but not limited to, employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects, all under the direction and supervision of the client; and
4. Customarily attempting to reassign the employees to other organizations when they finish each assignment.

Business Activities. Business activities generally assigned by staffing businesses to its employees, include but are not limited to, services rendered with respect to the following:

1. Construction (both custom and speculative);
2. Customer software design and implementation;
3. Manufacturing and light industrial activities;
4. Professional services including medical and clerical;
5. Janitorial and repair services; and
6. Other skilled and unskilled labor.

The gross income received by a staffing business is subject to Tacoma’s business and occupation tax and possibly Tacoma’s utility taxes. The appropriate tax classification is determined by the activities that the employee engages in for the staffing business client. It is the staffing business’s responsibility to determine or identify the appropriate tax classification prior to dispatching its employee to its client and to report to Tacoma accordingly.

The staffing business should not assume that they should report its employees activities under the same classification under which its client reports. It is the activity of each employee and the employee’s relationship to the client or consumer that determines the tax classification, not the clients reporting classification.

When an assigned employee provided by a staffing business to a client provides more than one activity then the following applies:

1. The different activities may be taxable under separate tax classifications.
2. If the staffing business separates the amounts it charges the client by activities, the separated charges are reported under the appropriate tax classifications.
3. If the staffing business does not separate its charge to the client, the charge is reported under the classification of the predominant activity (50% or more of the workers time).
4. When two or more employees engaged in different activities are assigned to one client, the charge for each employee is reported based on the predominant activity of each individual employee.

Examples

(i) A business operating a retail store is taxable under the retailing tax classification. If the staffing business provides a receptionist for the retail stores office, the gross income received for the receptionist's services is subject to the service and other business activities classification. The service and other business activities classification applies because the receptionist is not providing retailing services.

(ii) A staffing business supplies an employee to help a prime construction contractor. If the employee provides construction and repair services to repair the contractors building then the activity would be retail and the staffing business must report under retailing. If the employee provides construction and repair service to repair a building that the contractor is repairing for another person then the activity would be reported under the wholesaling classification.

(iii) The assigned employee in (ii) above has a commercial driver's license and is only occasionally required to drive the client's truck within Tacoma to pick up a load of gravel (an activity subject to the service and other business activities classification). The employee also spends about one hour per day helping in the office. The predominant activity is the wholesaling activity of performing construction work because the greatest amount of time is spent performing wholesaling construction work. The staffing business has not segregated charges for the other lesser activities. In this case, the staffing business reports the gross amount charged to the client under the wholesaling classification.

(iv) Same facts as in subsection (iii) above, except the staffing business also provides a receptionist to the client (general contractor.) As demonstrated in subsection (iii), the staffing business is subject to the wholesaling tax on the gross amount charged to the client for work done by the employee engaged in construction work. However, the staffing business is subject to the service and other business activities tax classification on the gross amount charged to the client for the receptionists work. The service and other business activities tax classification is the proper classification notwithstanding the client reporting under the wholesaling classification for its construction activities.

Documentation. The staffing business must keep documentation showing what services its assigned employees performed. All available information should be recorded concurrently with the assignment of the employee and the charge for the service. It is important that the client's labor and skill requirements are detailed upfront as much as possible prior to dispatch.

Documentation may be in the form of a copy of a client order or other documented request by a client for an employee. The documentation must state the specific work to be performed, and/or the employee skills requested by the client. If the clients request comes in by telephone, the staffing business should ask exactly what type of services are required and write them down on an order form, or as a memo to the clients file. The employee can also provide a written explanation of the services actually performed.

Documentation to support the business license tax classification must be sufficiently detailed to support the classification reported. If, subsequent to filing a return, it is later determined that income has been incorrectly classified, amended returns should be submitted to the Tax and License Division to make the appropriate adjustment.

Adopted May 17, 2016

RULE 275

JOB CREDITS

Introduction. This rule explains the types of job tax credits available to businesses when they create new positions in the City and the application of the tax credit to the businesses business & occupation tax obligations.

Intent. It is the intent of the City Council to encourage growth and attract new businesses to the City. To that end, the City Council finds that an incentive measured by a business's growth in jobs is a meaningful method of attracting and retaining such businesses. Therefore, the incentive is specifically targeted at new full-time positions.

Business Activities. All business activities in the City are eligible for the basic job tax credit. Certain business activities may be eligible for additional job tax credits.

Definitions.

"Full-time" means 35 hours per week or an average of 35 hours per week based on a calendar year of work.

"Qualified employment position" means a permanent, full-time position with compensation of at least a "family wage" within 12 months after the date of hire (allowing for training time and a probation period). If an employee is either voluntarily or involuntarily separated from employment, the employment position is considered filled on a full-time basis during a period not to exceed three months if the employer is actively recruiting a replacement employee.

Job Tax Credits.

Basic Job Credit. The basic credit shall be $500 for each qualified employment position within the City.

If a permanent part-time position with compensation of at least a "family wage" within 12 months after the date of hire is converted to a permanent full-time position within the first 12 months of the position being created, the position will be considered a qualified employment position for the basic credit of $500.

Green Job Credit. A $250 is available for each qualified employment position meeting the requirements of the basic credit and where the position is a green job.

To qualify for the additional $250 credit, the position must be a green job at the time the position is created.

Tacoma Resident Credit. A $500 is available for each qualified employment position meeting the requirements of the basic credit and where the employee hired to fill the position is a resident of Tacoma.

To qualify for the additional $500 credit, the position must be filled by a Tacoma resident within the first 12 months of the position being created, even if the original person hired for the position was not a Tacoma resident.

If a new qualifying position is not filled with a Tacoma resident within the first 12 months, the position will not at any time qualify for the additional $500 even if the position is refilled with a Tacoma resident during years two through five of the eligible credit.

International Service Activities Empowerment Zone Credit. A $250 is available for each qualified employment position within the City meeting the requirements of the basic credit and eligible for a credit under RCW 82.04.44525.

Examples

Tacoma Resident
A qualifying employment position is created on March 1, 2019. A non-resident of Tacoma is hired on the same day however decides to leave the position as of September 1, 2019. The position is filled with a new employee within 90-days of the position being vacated on October 1, 2019. The new employee is a Tacoma resident.

The employer is eligible for the basic job credit of $500 and the Tacoma resident job credit of an additional $500 for a total of $1,000 credit for five years.

No Tax Liability
Four new qualifying employment positions are created on June 1, 2019, with a family wage. All four positions are filled with Tacoma residents on the same day.

The employer is eligible for the basic job credit of $2,000 ($500x4) and the Tacoma resident job credit of an additional $2,000 ($500x4) for a total of $4,000 credit for five years expiring on December 31, 2023.

The employer does not have any tax liability in 2019 or during the first quarter of 2020. The business owes $3,500 of tax for the second quarter of 2020. The credit of $4,000 can be applied against the tax liability of $3,500 and the employer will have $500 of credit remaining to apply to their third quarter tax liability. Although credit was not used in 2019, the credit does not carry forward to the following year.

Family Wage within Twelve Months
A new employment position is created on September 1, 2019 and a non-resident of Tacoma hired on the same day. The position starts out paying less than the minimum family wage, however, on March 1, 2020, after a six-month training period, the employee's wage is increased to the required family wage.

The employer is eligible for the basic job credit in 2019 of $250 because the position was hired after July 1st and a $500 job credit for the following four years (2020 – 2023).

Application of Tax Credit. A qualifying job tax credit is available based on a calendar year and may not be carried forward to another calendar year or refunded if the job tax credit is more than the tax obligation for the same calendar year.

Documentation. No application is necessary for the job tax credit; however, a Supplemental Information Sheet must be submitted to the City for each new employee position for which credit is requested and included with the first tax return in which the credit is claimed.

If a business is submitting information for multiple job tax credits, an excel spreadsheet, with requested data approved by the Director, may be submitted in lieu of the Supplemental Information Sheet.

The business must keep records necessary for the City to verify eligibility under this section. This information includes:

- Employment records, including Washington State and federal payroll tax returns, for the current year and previous five years;
- Information relating to description of business activity engaged in at the eligible location by the employee; and
- Employee records and payroll journal, including documentation of an employee's address of residency at the time the employee was hired to fill the eligible position.

Adopted February 22, 2019

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