

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

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

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

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

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

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

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

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

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

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

(3) **Business and occupation tax.**

(a) **Radio and television broadcasting.** Taxable on gross income from the sale of radio or television advertising.

(b) **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, and granting a license to use facilities (as distinct from the leasing or renting of tangible personal property, see WAC 458-20-211).

(c) **Royalties.** Taxable on charges to other broadcasters for granting the right to use intangible property (e.g., the right to use broadcast material).

(d) **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 subject to retail sales tax. The sale of custom-made programs, commercials, films, etc., is not taxable under this classification. (See subheading **Service and other activities** in (b) of this subsection.)

(e) **Manufacturing.** Taxable on the cost to produce special programs, such as public affairs, religious, travelogues, and other general programming, which are distributed via tangible media to other broadcasters under a lease or contract granting a mere license to use. (For a discussion of the taxability of digital products transferred electronically, see WAC 458-20-15503.) 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.

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

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

(b) **Gross receipts from national, network, and regional advertising.** The taxpayer may deduct actual gross receipts from national, network, and regional advertising, as included in the gross amount reported under radio and television broadcasting.

The "standard deduction" for gross receipts from national, network, and regional advertising as provided by RCW 82.04.280, represents a percentage based on the national average thereof as annually reported by the Federal Communications Commission. The Federal Communications Commission no longer publishes these figures and henceforth the "standard deduction" is not available. Broadcasters may only deduct gross receipts from national, network, and regional advertising on an actual basis.

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

It will be presumed that the entire gross income of radio and television stations located within the state of Washington from local advertising is subject to tax unless and until the taxpayer submits proof to the department of revenue that some portion of such income is exempt according to the principles set forth herein and until a specific allocation formula has been approved by the department.

(d) **Method of allocation.** When the total daytime listening area of a radio or television station extends beyond the boundaries of the state of Washington, the allowable deduction is that portion of revenue represented by the out-of-state audience computed as a ratio to the station's total audience as measured by the 100 microvolt signal strength and delivery by wire, if any. The out-of-state audience may therefore be determined by delivery "over the air" and by community antenna television systems. However, community antenna television audiences may not be claimed by a station in the same area in which it claims an audience served over the air, thus eliminating a claim for double exemption.

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

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

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

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

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

If the tapes, films, etc., upon which the sales tax has been paid are later sold by the broadcaster in the regular course of business, the provisions of WAC 458-20-102 concerning purchases for dual purposes will apply.

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

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

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

[Statutory Authority: RCW 82.32.300 and 82.01.060. WSR 15-01-126, § 458-20-241, filed 12/19/14, effective 1/19/15. Statutory Authority: RCW 82.32.300. WSR 83-08-026 (Order ET 83-1), § 458-20-241, filed 3/30/83; Order ET 70-3, § 458-20-241 (Rule 241), filed 5/29/70, effective 7/1/70.]