

WAC 458-20-118 Sale or rental of real estate, license to use real estate. (1) 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 B&O tax classification unless otherwise taxed under another classification by specific statute, e.g., sale of lodging taxed under retailing. (See RCW 82.04.050 and 82.04.290.) Further, no exemption is allowed for amounts received as commissions for the sale or rental of real estate (RCW 82.04.390) nor for interest received by persons engaged in the business of selling real estate on time or installment contracts. For purposes of distinguishing the lease or rental of real estate from the granting of a license to use real estate the department of revenue will be guided by the following principles.

(2) **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. The rental of a boat moorage slip or an airplane hangar/tie down site is presumed to be a rental of real estate only if a specific space, slip, or site is assigned and the rental is for a period of thirty days or longer.

(3) **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.

(a) Persons who are involved in more than one kind of business activity are required to segregate their income and report under the appropriate tax classification based on the nature of the specific activity (see RCW 82.04.440).

(b) It will be presumed that a taxable license to use or enjoy real property is granted in the rental of the following:

(i) Hotel rooms (for periods of less than 30 continuous days; see WAC 458-20-166).

(ii) Motels, tourist courts and trailer parks (for periods of less than 30 continuous days; see WAC 458-20-166).

(iii) Cold storage lockers (see WAC 458-20-133).

(iv) Safety deposit boxes and private mail boxes.

(v) Storage space (see WAC 458-20-182).

(vi) Space within park or fair grounds to a concessionaire.

(vii) Hairdressers, barbers, or manicurists who lease space within another business (see WAC 458-20-200 Leased departments).

(viii) Use of boat launch facilities for recreational purposes.

(ix) Space on a building for the attachment of advertising signs, including for periods in excess of 30 continuous days.

(c) RCW 82.04.050 (2)(f) specifically defines all services of a hotel, motel, or similar businesses as being retail sales. Thus, the

rentals of meeting rooms, display rooms, or ball rooms are retail sales when rented out by such businesses. Persons who are not in the business of selling lodging are taxable under the service B&O tax classification on income from the rental of meeting rooms.

[Statutory Authority: RCW 82.32.300. WSR 91-02-056, § 458-20-118, filed 12/28/90, effective 1/28/91; WSR 83-07-034 (Order ET 83-17), § 458-20-118, filed 3/15/83; Order ET 70-3, § 458-20-118 (Rule 118), filed 5/29/70, effective 7/1/70.]