

WSR 23-04-069

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed January 30, 2023, 2:29 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-101 Tax registration and tax reporting and 458-20-104 Small business tax relief based on income of business.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is updating WAC 458-20-101 and 458-20-104 due to changes from recent legislation, ESSB 5980 (2022). The changes include updates to RCW 82.32.045 to increase the tax registration/reporting threshold, and RCW 82.04.4451 to increase small business tax credits.

Reasons Supporting Proposal: The update is to conform rules to ESSB 5980, which passed during the 2022 legislative session.

Statutory Authority for Adoption: RCW 82.01.060, 82.32.045, and 82.04.4451.

Statute Being Implemented: RCW 82.32.045 and 82.04.4451.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Justin Morehouse, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1533; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1615.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is appropriate for this rule update because the department is incorporating changes resulting from 2022 legislation.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Justin Morehouse, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1533, fax 360-534-1606, email JustinM@dor.wa.gov, AND RECEIVED BY April 3, 2023.

January 30, 2023
Atif Aziz
Rules Coordinator

OTS-4332.1

AMENDATORY SECTION (Amending WSR 17-22-027, filed 10/23/17, effective 11/23/17)

WAC 458-20-101 Tax registration and tax reporting. (1) **Introduction.** This rule explains tax registration and tax reporting requirements for the Washington state department of revenue (department) as established in RCW 82.32.030 and 82.32.045. This rule discusses who is required to be registered, and who must file excise tax returns. This rule also discusses changes in ownership requiring a new registration, the administrative closure of taxpayer accounts, and the revocation and reinstatement of a tax account with the department. Persons required to file tax returns should also refer to WAC 458-20-104 (Small business tax relief based on income of business). Persons with certain ownership structures (e.g., corporations, limited liability companies, limited partnerships, limited liability partnerships, and limited liability limited partnerships) must also register with the office of the secretary of state.

Examples. Examples found in this rule identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(2) **Persons required to obtain tax registration endorsements.** Except as provided in (a) of this subsection, every person who is engaged in any business activity for which the department is responsible for administering and/or collecting a tax or fee, must apply for and obtain a tax registration endorsement with the department. (See RCW 82.32.030.) This endorsement is printed on the face of the business person's business license document. The tax registration endorsement is nontransferable, and valid for as long as that person continues in business.

(a) **When registration is not required.** Registration under this rule is not required if all of the following conditions are met:

(i) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW (business and occupation (B&O) tax), is less than (~~twelve thousand dollars~~) \$12,000 per year;

(ii) A person's gross income from all business activities taxable under chapter 82.16 RCW (public utility tax), is less than (~~twelve thousand dollars~~) \$12,000 per year;

(iii) The person is not required to collect or pay to the department retail sales tax or any other tax or fee which the department is authorized to administer and/or collect; and

(iv) The person is not otherwise required to obtain a business license subject to the business license application procedure provided in chapter 19.02 RCW. For the purposes of this rule, the term "business license" means any agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, including agency rule, to engage in any activity.

(b) **Tax registration endorsement.** The term "tax registration endorsement," as used in this rule, has the same meaning as the term "tax registration" or "certificate of registration" used in Title 82 RCW and other rules in chapter 458-20 WAC.

(c) **Person.** The term "person" has the meaning given in RCW 82.04.030 and WAC 458-20-203.

(d) **Tax account ID.** The term "tax account ID" as used in this rule, is the ID number used to identify persons registered with the department.

(3) **Requirement to file tax returns.** Persons registered with the department must file tax returns and remit the appropriate taxes to the department, unless they are placed on an "active nonreporting" status by the department.

(a) **Active nonreporting status requirements.** The department may relieve any person of the requirement to file returns by placing the person in an active nonreporting status if all of the following conditions are met:

(i) The person's value of products (RCW 82.04.450), gross proceeds of sales (RCW 82.04.070), or gross income of the business (RCW 82.04.080), from all business activities taxable under chapter 82.04 RCW (B&O tax), is less than (~~(+~~

~~(A) Twenty-eight thousand dollars per year; or~~

~~(B) Forty-six thousand six hundred sixty-seven dollars per year for persons generating at least fifty percent of their gross amount from activities taxable under RCW 82.04.255 (real estate brokerage services), RCW 82.04.290 (2) (a) (service and other activities B&O tax classification), and RCW 82.04.285 (operating contests of chance))~~ \$125,000;

(ii) The person's gross income (RCW 82.16.010) from all business activities taxable under chapter 82.16 RCW (public utility tax) is less than (~~(twenty-four thousand dollars))~~ \$24,000 per year; and

(iii) The person is not required to collect or pay to the department retail sales tax or any other tax or fee the department is authorized to collect.

(b) **Notification of active nonreporting status.** The department will notify those persons it places on an active nonreporting status. A person may request to be placed on an active nonreporting status if the conditions of (a) of this subsection are met.

(c) **Responsibility to notify department about change in status.** Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities do not meet any of the conditions explained in (a) of this subsection. These persons will be removed from an active nonreporting status, and must file tax returns and remit appropriate taxes to the department, beginning with the first period in which they do not qualify for an active nonreporting status.

(d) **Obligation to file a tax return.** Persons that have not been placed on an active nonreporting status by the department must continue to file tax returns and remit the appropriate taxes.

(4) (a) **Example 1.** Bob Brown is starting a bookkeeping service. Income generated from this activity is taxable under the service and other activities B&O tax classification. The gross income of the business is expected to be less than (~~(twelve thousand dollars))~~ \$12,000 per year. Bob's only income is earned from his bookkeeping activity. Due to the nature of the business activities, Bob is not required to pay or collect any other tax or fee which the department is authorized to collect. Bob has no other need to file a business license application.

Bob Brown is not required to apply for and obtain a tax registration endorsement with the department. The conditions under which a business person may engage in business activities without obtaining the tax registration endorsement have been met. However, if Bob Brown in some future period has gross income exceeding (~~(twelve thousand~~

dollars)) \$12,000 per year, he will be required to obtain a tax registration endorsement. If Bob's gross income exceeds (~~(forty-six thousand six hundred sixty-seven dollars)~~) \$125,000 per year (~~((because Bob generates all of his gross income under the service and other activities B&O tax classification))~~), he will be required to file tax returns and remit the appropriate taxes.

(b) **Example 2.** Cindy Smith is opening a business to sell children's books to local customers at retail. The gross proceeds of sales are expected to be less than (~~(twelve thousand dollars)~~) \$12,000 per year.

Cindy Smith must apply for and obtain a tax registration endorsement with the department. While gross income is expected to be less than (~~(twelve thousand dollars)~~) \$12,000 per year, Cindy Smith is required to collect and remit retail sales tax.

(c) **Example 3.** Alice Smith operates a taxicab service with an average gross income of (~~(eighteen thousand dollars)~~) \$18,000 per year. She also owns a management consulting service with an average gross income of (~~(fifteen thousand dollars)~~) \$15,000 per year. Assume that Alice is not required to collect or pay to the department any other tax or fee the department is authorized to collect. Alice qualifies for an active nonreporting status because her taxicab income is less than the (~~(twenty-four thousand dollar)~~) \$24,000 threshold for the public utility tax and her consulting income is less than the (~~(forty-six thousand six hundred sixty-seven dollar)~~) \$125,000 threshold for the B&O tax. If the department does not first place her on an active nonreporting status, she may request the department to do so.

(5) **Out-of-state businesses.** Out-of-state businesses may have to obtain a tax registration endorsement with the department.

(a) **B&O and public utility taxes.** The B&O and public utility taxes are imposed on the act or privilege of engaging in business activity within Washington. RCW 82.04.220 and 82.16.020. Out-of-state persons who have established sufficient nexus in Washington to be subject to Washington's B&O or public utility taxes must obtain a tax registration endorsement with this department if they do not satisfy the conditions expressed in subsection (2)(a) of this rule.

(b) **Retail sales and use taxes.** Out-of-state persons required to collect Washington's retail sales or use tax under RCW 82.04.067 must obtain a tax registration endorsement. Out-of-state persons who are not statutorily required to collect Washington's use tax, may elect to obtain a tax registration endorsement.

(c) **Other relevant rules for out-of-state persons.** Out-of-state persons making sales into or doing business within Washington should also refer to the following rules in chapter 458-20 WAC for a discussion of their tax reporting responsibilities:

(i) WAC 458-20-193 Interstate sales of tangible personal property;

(ii) WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce;

(iii) WAC 458-20-194 Doing business inside and outside the state;

(iv) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities; and

(v) WAC 458-20-221 Collection of use tax by retailers and selling agents.

(6) **Registration procedure.** The state of Washington initiated the combined licensing program of the business licensing service, and later the unified business identifier (UBI) program to simplify the registration and licensing requirements imposed on the state's business

community. Completion of the business license application and payment of the applicable fee(s) enables a person to register or license with several state agencies and cities, including the department of revenue, using a single form. The person will be assigned one unified business identifier number, which is used by all state agencies and cities participating in the UBI program. The department may use the unified business identifier number as the taxpayer's department of revenue tax account ID, or it may assign a different or additional ID as the revenue tax account ID.

(a) **Business license application.** Persons completing the business license application will be issued a business license document if at least one registration or license endorsement was issued. The face of this document will list the registrations and licenses (endorsements) which have been obtained.

(b) **Fees.** The department does not charge a separate registration fee for issuing a tax registration endorsement. Persons required to complete a business license application are subject to other fees.

(c) **Forms and submission.** Business license applications are available online from the department's business licensing service website at bls.dor.wa.gov.

(7) **Registration application.** The department requires the following items to be provided on a business license application in order to obtain a tax registration endorsement:

(a) Purpose or reason for application.

(b) The registration endorsement(s) that are needed, including any information required by the respective regulating agency specific to the endorsement requested.

(c) Business information which includes, but is not limited to:

(i) Type of business entity ownership structure;

(ii) Business activities;

(iii) Business name and open date;

(iv) Business contact information, including the physical and mailing address of the business;

(v) Estimated gross annual income of business;

(vi) Business identification number as follows:

(A) Social Security number of the business owner(s) if the business ownership structure is a sole proprietorship or general partnership; or

(B) Federal employer identification number (FEIN) for all other business ownership structures other than those listed in (c)(vi)(A) of this subsection including, but not limited to, corporations, limited liability companies, limited liability partnerships, and joint ventures; or

(C) For those business entities that have not been issued a Social Security number or FEIN, the department may request the business entity provide an alternative federally issued identification number.

(vii) Full legal name(s) and contact information of all governing persons of the business entities identified in (c)(vi)(B) of this subsection.

(d) All license and administrative fees due for the application filing and endorsements requested.

(e) Additional information other than the items identified in this subsection may also be required to satisfy the specific licensing requirements of other agencies.

(8) **Temporary revenue registration certificate.** A temporary revenue registration certificate may be issued to any person who operates a business of a temporary nature.

(a) Temporary businesses, for the purposes of registration, are those with definite, predetermined dates of operation for no more than two events each year with each event lasting no longer than one month.

(b) Each temporary registration certificate is valid for a single event. Persons that subsequently make sales into Washington may incur additional tax liability. Refer to WAC 458-20-193 (Interstate sales of tangible personal property) for additional information on tax reporting requirements. It may be required that a tax registration endorsement be obtained, in lieu of a temporary registration certificate. See subsection (2) of this rule.

(c) Temporary revenue registration certificates may be obtained by following registration instructions on the department's website at dor.wa.gov.

(9) **Display of business license document.** The taxpayer is required to display the business license document in a conspicuous place at the business location for which it is issued.

(10) **Multiple locations.** A business license document is required for each place of business where a taxpayer engages in business activities for which the department is responsible for administering and/or collecting a tax or fee, and any main office or principal place of business from which excise tax returns are to be filed. This requirement applies to locations both within and without the state of Washington.

(a) **Place of business.** For the purposes of this subsection, the term "place of business" means:

(i) Any separate establishment, office, stand, cigarette vending machine, or other fixed location; or

(ii) Any vessel, train, or the like, where the taxpayer solicits or makes sales of tangible personal property, or contracts for or renders services in this state or otherwise transacts business with customers.

(b) **Multiple locations with a single excise tax return.** A taxpayer may report all tax liability for multiple business locations on a single excise tax return, but must maintain a separate business license document for each location. All business license documents will reflect the same tax account ID.

(c) **Multiple locations with separate excise tax returns.** A taxpayer desiring to file a separate excise tax return covering a branch location, or a specific construction contract, may request on the business license application a separate department of revenue tax account ID for each location to be reported separately.

(d) **Application required for each location.** A business license application must be completed for each business location to obtain a separate business license document.

(11) **Change in ownership.** When a change in ownership of a business occurs, the new owner must submit a business license application(s) to receive a new business license document for each business location acquired that is endorsed with the appropriate licenses needed for the business. If the new owner has never been registered for business, it will be issued a new unified business identifier number. The previous business owner's license document must be destroyed, and any further use of the previous owner's tax account ID for tax purposes is prohibited.

(a) **Change in ownership.** A "change in ownership," for purposes of registration, occurs when, but is not limited to:

(i) The sale of a business by one individual, firm or corporation to another individual, firm or corporation;

(ii) The dissolution of a partnership;

(iii) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the partners is equal to or greater than (~~(fifty)~~) 50 percent. For example, a general partnership currently has two partners and a third partner is added. The addition of one partner is considered a "change in ownership" for purposes of registration because it is equal to or greater than a (~~(fifty)~~) 50 percent change in the original number of partners;

(iv) Incorporation of a business previously operated as a partnership or sole proprietorship;

(v) Changing from a corporation to a partnership or sole proprietorship; or

(vi) Changing from a corporation, partnership or sole proprietorship to a limited liability company or a limited liability partnership.

(b) **Situations that are not a change in ownership.** For the purposes of registration, a "change in ownership" does not occur upon:

(i) The sale of all or part of the common stock of a corporation;

(ii) The transfer of assets to an assignee for the benefit of creditors or upon the appointment of a receiver or trustee in bankruptcy;

(iii) The death of a sole proprietor where there will be a continuous operation of the business by the executor, administrator, or trustee of the estate or, where the business was owned by a marital community or registered domestic partnership, by the surviving spouse or surviving domestic partner of the deceased owner;

(iv) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the partners is less than (~~(fifty)~~) 50 percent. For example, a general partnership currently has three partners. One partner is removed and immediately replaced by another partner. The removal and replacement of one partner is not considered a "change in ownership" for purposes of registration because it results in less than a (~~(fifty)~~) 50 percent change in the original number of partners; or

(v) A change in the trade name under which the business is conducted.

(c) **Situations where a new business license application may still be required.** While changes in a business entity may not result in a "change in ownership," the completion of a new business license application may be required to reflect the changes in the registered account.

(12) **Change in location.** Whenever the place of business is moved to a new location, the taxpayer must notify the department of the change. Although a new business license application may not be required to notify the department of a location change, some endorsements and licenses will require a new business license and reapproval of the license endorsements at the new location. A new business license document will be issued to reflect the change in location.

(13) **Lost business license documents.** If any business license document is lost, destroyed or defaced as a result of accident or of natural wear and tear, a new document will be issued upon request.

(14) **Administrative closure of taxpayer accounts.** The department may, upon written notification to the taxpayer, close the taxpayer's tax account and rescind its tax registration endorsement whenever the

taxpayer has reported no gross income and there is no indication of taxable activity for two consecutive years.

The taxpayer may request, within (~~thirty~~) 30 days of notification of closure, that the account remain open. A taxpayer may also request that the account remain open on an "active nonreporting" status if the requirements of subsection (3)(a) of this rule are met. The request will be reviewed by the department and if found to be warranted, the department will immediately reopen the account. The following are acceptable reasons for continuing as an active account:

(a) The taxpayer is engaging in business activities in Washington which may result in tax liability.

(b) The taxpayer is required to collect or pay to the department a tax or fee which the department is authorized to administer and/or collect.

(c) The taxpayer has in fact been liable for excise taxes during the previous two years.

(15) **Reopening of taxpayer accounts.** A business person choosing to resume business activities where the department is responsible for administering and/or collecting a tax or fee, may request a previously closed account be reopened. The business person must complete a new business license application. When an account is reopened a new business license document, reflecting a current tax registration endorsement, will be issued. Persons requesting the reopening of an account that had previously been closed due to a revocation action should refer to subsection (16) of this rule.

(16) **Revocation and reinstatement of tax registration endorsements.** Actions to revoke tax registration endorsements must be conducted by the department pursuant to the provisions of chapter 34.05 RCW, the Administrative Procedure Act, and the taxpayers bill of rights of chapter 82.32A RCW. Persons should refer to WAC 458-20-10001 Adjudicative proceedings—Brief adjudicative proceedings—Wholesale and retail cigarette license revocation/suspension—Certificate of registration (tax registration endorsement) revocation, for an explanation of the procedures and processes pertaining to the revocation of tax registration endorsements.

(a) The department may, by order, revoke a tax registration endorsement if:

(i) Any tax warrant issued under the provisions of RCW 82.32.210 is not paid within (~~thirty~~) 30 days after it has been filed with the clerk of the superior court; or

(ii) The taxpayer is delinquent, for three consecutive reporting periods, in the transmission to the department of retail sales tax collected by the taxpayer; or

(iii) Either:

(A) The taxpayer was convicted of violating RCW 82.32.290(4) and continues to engage in business without fully complying with RCW 82.32.290 (4)(b)(i) through (iii); or

(B) A person convicted of violating RCW 82.32.290(4) is an owner, officer, director, partner, trustee, member, or manager of the taxpayer, and the person and taxpayer have not fully complied with RCW 82.32.290 (4)(b)(i) through (iii).

For purposes of (a)(iii) of this subsection, the terms "manager," "member," and "officer" mean the same as defined in RCW 82.32.145.

(b) The revocation order will be, if practicable, posted in a conspicuous place at the main entrance to the taxpayer's place of business. The department may also post a copy of the revocation order

in any public facility, as may be allowed by the public entity that owns or occupies the facility. The revocation order posted at the taxpayer's place of business must remain posted until the tax registration endorsement has been reinstated or the taxpayer has abandoned the premises. A revoked endorsement will not be reinstated until:

(i) The amount due on the warrant has been paid, or satisfactory arrangements for payment have been approved by the department, and the taxpayer has posted with the department a bond or other security in an amount not exceeding one-half the estimated average annual liability of the taxpayer; or

(ii) The taxpayer and, if applicable, the owner, officer, director, partner, trustee, member, or manager of the taxpayer who was convicted of violating RCW 82.32.290(4) are in full compliance with RCW 82.32.290 (4)(b)(i) through (iii), if the tax registration endorsement was revoked as described in (a)(iii) of this subsection.

(c) It is unlawful for any taxpayer to engage in business after its tax registration endorsement has been revoked, regardless of whether other licensing endorsements may exist on the business license document.

(17) **Penalties for noncompliance.** The law provides that any person engaging in any business activity, for which registration with the department is required, must obtain a tax registration endorsement.

(a) The failure to obtain a tax registration endorsement prior to engaging in any taxable business activity constitutes a gross misdemeanor.

(b) Engaging in business after a tax registration endorsement has been revoked by the department constitutes a Class C felony.

(c) Any tax found to have been due, but delinquent, and any tax unreported as a result of fraud or misrepresentation, may be subject to penalty as provided in chapter 82.32 RCW, WAC 458-20-228 and 458-20-230.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 17-22-027, § 458-20-101, filed 10/23/17, effective 11/23/17; WSR 16-10-104, § 458-20-101, filed 5/4/16, effective 6/6/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.24.550(2), and 82.26.220(2). WSR 15-15-025, § 458-20-101, filed 7/7/15, effective 8/7/15. Statutory Authority: RCW 82.32.300, 82.01.060(2) and 82.32.215. WSR 14-13-093, § 458-20-101, filed 6/17/14, effective 7/18/14. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 08-16-073, § 458-20-101, filed 7/31/08, effective 8/31/08; WSR 07-03-031, § 458-20-101, filed 1/8/07, effective 2/8/07. Statutory Authority: RCW 82.32.300. WSR 00-01-069, § 458-20-101, filed 12/13/99, effective 1/13/00; WSR 97-08-050, § 458-20-101, filed 3/31/97, effective 5/1/97; WSR 95-07-089, § 458-20-101, filed 3/17/95, effective 4/17/95; WSR 93-13-126, § 458-20-101, filed 6/22/93, effective 7/23/93; WSR 86-12-015 (Order ET 86-11), § 458-20-101, filed 5/27/86; WSR 83-07-032 (Order ET 83-15), § 458-20-101, filed 3/15/83; Order ET 73-1, § 458-20-101, filed 11/2/73; Order ET 71-1, § 458-20-101, filed 7/22/71; Order ET 70-3, § 458-20-101 (Rule 101), filed 5/29/70, effective 7/1/70.]

OTS-4331.1

AMENDATORY SECTION (Amending WSR 10-23-058, filed 11/12/10, effective 12/13/10)

WAC 458-20-104 Small business tax relief based on income of business. (1) **Introduction.** This rule explains the business and occupation (B&O) tax credit for small businesses provided by RCW 82.04.4451. This credit is commonly referred to as the small business B&O tax credit or small business credit (SBC). The amount of small business B&O tax credit available on a tax return can increase or decrease, depending on the reporting frequency of the account and the net B&O tax liability for that return. This rule also explains the public utility tax income exemption provided by RCW 82.16.040. The public utility tax exemption is a fixed amount, or threshold, based on the reporting frequency assigned to the account. Readers should refer to WAC 458-20-22801 (Tax reporting frequency—Forms) for an explanation of how the department of revenue (department) assigns a particular reporting frequency to each account. Readers may also want to refer to WAC 458-20-101 for an explanation of Washington's tax registration and tax reporting requirements.

This rule provides examples that identify a number of facts and then state a conclusion regarding the applicability of the income exemption for the public utility tax or small business B&O tax credit. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **The public utility tax income exemption.** Persons subject to public utility tax (PUT) are exempt from payment of this tax for any reporting period in which the gross taxable amount reported under the combined total of all public utility tax classifications does not equal or exceed the maximum exemption for the assigned reporting period. Per RCW 82.16.040, the public utility tax exemption amounts are:

for taxpayers reporting monthly.....	\$2,000 per month
for taxpayers reporting quarterly.....	\$6,000 per quarter
for taxpayers reporting annually.....	\$24,000 per annum

(a) **What if the taxable income equals or exceeds the maximum exemption?** If the taxable income for a reporting period equals or exceeds the maximum exemption, tax must be remitted on the full taxable amount.

(b) **How does the exemption apply if a business does not operate for the entire tax reporting period?** The public utility tax maximum exemptions apply to the entire tax reporting period, even though the business may not have operated during the entire period.

(c) **Do taxable amounts for B&O tax or other taxes affect this exemption?** The public utility tax exemption is not affected by taxable amounts reported in the B&O tax section or any of the other tax sections of the tax return.

(d) **Example - How is the public utility tax exemption applied?** Taxpayer registers with the department and is assigned a quarterly tax reporting frequency. Taxpayer begins business activities on February 1st. During the two months of the first quarter that the taxpayer is in business, taxpayer's public utility gross income is (~~seven thousand dollars~~) \$7,000. After deductions provided by chapter 82.16 RCW (Public utility tax) are computed, the total taxable amount is (~~five~~

thousand dollars)) \$5,000. In this case, the taxpayer does not owe any public utility tax because the taxable amount of ((~~five thousand dollars~~)) \$5,000 is less than the ((~~six thousand dollar~~)) \$6,000 exemption threshold for quarterly taxpayers. The fact that the taxpayer was in business during only two months out of the three months in the quarter has no effect on the threshold amount. However, if there were no deductions available to the taxpayer, the taxable amount would have been ((~~seven thousand dollars~~)) \$7,000. The public utility tax would then have been due on the full taxable amount of ((~~seven thousand dollars~~)) \$7,000.

(3) **The small business B&O tax credit.** Persons subject to the B&O tax may be eligible to claim a small business B&O tax credit against the amount of B&O tax otherwise due. The small business B&O tax credit operates completely independent of the public utility tax exemption described above in subsection (2) of this rule. RCW 82.04.4451 authorizes the department to create a tax credit table for use by all taxpayers when determining the amount of their small business B&O tax credit. Taxpayers must use the tax credit table to determine the appropriate amount of their small business B&O tax credit. A tax credit table for each of the monthly, quarterly, and annual reporting frequencies can be found on the department's internet site at ((~~http://dor.wa.gov; or by contacting:~~)) dor.wa.gov.

((Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
800-647-7706))

The statute provides that taxpayers who use the tables will not owe any more tax than if they used the statutory credit formula to determine the amount of the credit. For taxpayers that file electronically, the department will automatically calculate the small business credit when the taxpayer completes the online return.

Effective ((~~May 1, 2010~~)) January 1, 2023, section ((~~1102~~)) 1, chapter ((~~23~~)) 295, Laws of ((~~2010 1st sp. sess.~~)) 2022 amended RCW 82.04.4451. Prior to that amendment the small business credit was calculated at a maximum of ((~~thirty five dollars~~)) \$70 multiplied by the number of months in the reporting period for all eligible taxpayers. As a result of the amendment, taxpayers ((~~who~~)) that report at least ((~~fifty~~)) 50 percent (i.e., ((~~fifty~~)) 50 percent or greater) of their total B&O taxable amount under RCW 82.04.255 (real estate brokers), RCW 82.04.290 (2) (a) (service and other activities), and RCW 82.04.285 (contests of chance) have their maximum credit increased to ((~~seventy dollars~~)) \$160 multiplied by the number of months in the reporting period. ((~~Just~~)) A few examples of businesses that generally have taxable amounts to report under RCW 82.04.290 (2) (a) are for-profit hospitals, for-profit research and development, accountants, attorneys, dentists, janitors, and landscape architects. Please see WAC 458-20-224, Service and other business activities for information and more examples of who should report under the service and other classification of the B&O tax.)

For taxpayers that do not report at least 50 percent of their B&O taxable amount under RCW 82.04.255, 82.04.290, and 82.04.285, prior to the amendment the small business credit was calculated at a maximum of \$35 multiplied by the number of months in the reporting period. As a result of the amendment, the maximum credit increased to \$55 multiplied by the number of months in the reporting period.

(a) **How is the credit applied if a business does not operate during the entire tax reporting period?** The small business B&O tax credit applies to the entire reporting period, even though the business may not have been operating during the entire period.

(b) **Can a husband and wife or partners in a state registered domestic partnership both take the credit?** Spouses or state registered domestic partners operating distinct and separate businesses are each eligible for the small business B&O tax credit. For both spouses or both domestic partners to qualify, each must have a separate tax reporting number and file his or her own business tax returns.

(c) **How do I determine the amount of the credit?** Taxpayers eligible for the small business B&O tax credit must follow the steps outlined in subsection (5) of this rule to determine the amount of credit available. Taxpayers who have other B&O tax credits to apply on a tax return, in addition to the small business B&O tax credit, may use the multiple B&O tax credit worksheet in subsection (4) of this rule before determining the amount of small business B&O tax credit available.

(d) **Can I carryover the small business B&O tax credit to future tax reporting periods?** Use of the small business B&O tax credit may not result in a B&O tax liability of less than zero, and thus there will be no unused credit.

(e) **Do I have to report and pay retail sales tax even if I do not owe any B&O tax?** Persons making retail sales must collect and pay all applicable retail sales taxes even if B&O tax is not due. There is no comparable retail sales tax exemption.

(4) **Multiple business and occupation tax credit worksheet.** The small business B&O tax credit should be computed after claiming any other B&O tax credits available under Title 82 RCW (Excise taxes). Examples of other B&O tax credits to be taken before computing the small business B&O tax credit include the multiple activities tax credit (~~(high technology credit,~~) and commute trip reduction credit (~~(pollution control credit, and cogeneration fee credit)~~). The following multiple B&O tax credit worksheet describes the process taxpayers must follow to apply credits in the appropriate order. Refer to subsection (6) of this rule for an example illustrating the use of the multiple B&O tax credit worksheet.

MULTIPLE B&O TAX CREDIT WORKSHEET

- 1. Determine the total Business and Occupation (B&O) tax due from the B&O section of your excise tax return. \$ _____
- 2. Add together the credit amounts taken for:
 - Multiple Activities Tax Credit from Schedule C (if applicable). \$ _____
 - (Add any other B&O tax credits from Title 82 RCW that will be applied to this return period.) + \$ _____
 - Total (Enter 0 if none of these credits are being taken.) \$ _____
- 3. Subtract line 2 from line 1. This is the total B&O tax allowable for the Small Business Credit. \$ _____
- 4. Find the specific tax credit table (Table 1 or Table 2) appropriate for the business activities and B&O taxable amounts on your excise tax return. Next, find the tax credit table which matches the reporting frequency assigned to the account. Then find the range of amounts which includes your total B&O tax due (see line three above).
- 5. Read across to the next column. This is the amount of the Small Business Credit to be used on the excise tax return. \$ _____

(5) **Using the tax credit table to determine your small business B&O tax credit.** The following steps explain how to use the small business B&O tax credit table:

(a) **Step one.** Determine the total B&O tax amount due from the excise tax return. This amount will normally be the total of the tax amounts due calculated for each classification in the B&O tax section of the excise tax return. However, if additional B&O tax credits will be taken on the return, refer to subsection (4) of this rule and the multiple B&O tax credit worksheet before going to step two.

(b) **Step two.** Find the B&O taxable amounts on the return reported under RCW 82.04.255 (real estate brokers), RCW 82.04.290 (2)(a) (service and other activities), and RCW 82.04.285 (contests of chance) then add them together. Divide that sum result by the total amount of all B&O taxable amounts reported on the return. If the result indicates 50 percent or greater of the total of all B&O taxable amounts came from activities reported under RCW 82.04.255, 82.04.290 (2)(a), and 82.04.285 combined, use Table 1 of the small business B&O tax credit table. If the result indicates less than ~~((fifty))~~ 50 percent of the total of all B&O taxable amounts came from activities reported under RCW 82.04.255, 82.04.290 (2)(a), and 82.04.285 combined, use Table ~~((1))~~ 2 of the small business B&O tax credit table. ~~((If the result indicates fifty percent or greater of the total of all B&O taxable amounts came from activities reported under RCW 82.04.255, 82.04.290 (2)(a), and 82.04.285 combined, use Table 2 of the small business B&O tax credit table.))~~

(c) **Step three.** Find the small business B&O tax credit table that matches the assigned reporting frequency, monthly, quarterly, or annual.

(d) **Step four.** Find the "If ~~((Your Total Business and Occupation Tax))~~ your net B&O tax is" column of the tax credit table and come down the column until you find the range of amounts which includes the total B&O tax due figure obtained from the excise tax return or multiple B&O tax credit worksheet.

(e) **Step five.** Read across to the "Your ~~((Small Business Credit))~~ SBC is" column. The figure shown is the amount of the small business B&O tax credit that can be claimed on the "Small Business B&O Tax Credit" line in the "Credits" section of the excise tax return.

(6) **Examples - Using the "Multiple B&O Tax Credit Worksheet" and the tax credit tables.**

(a) **Using the "Multiple B&O Tax Credit Worksheet."** Assume that ABC reports quarterly. This quarter, ABC reports ~~((one hundred ninety dollars))~~ \$190 under the wholesaling classification and ~~((seventy dollars))~~ \$70 under the manufacturing classification for a total B&O tax liability of ~~((two hundred sixty dollars))~~ \$260. ABC completes Schedule C, and determines it is entitled to a multiple activities tax credit (MATC) of ~~((seventy dollars))~~ \$70. Using the multiple B&O tax credit worksheet, ABC enters ~~((two hundred sixty dollars))~~ \$260 on line one, enters ~~((seventy dollars))~~ \$70 on line two, and enters ~~((one hundred ninety dollars))~~ \$190 on line three (line two subtracted from line one). Line three, ~~((one hundred ninety dollars))~~ \$190 is the total B&O tax. ABC will use this amount to determine whether it is eligible for a small business B&O tax credit.

(b) **Using the small business B&O tax credit tables.** Assume the facts are the same as in the previous example in subsection (6)(a) of this rule. After completing the multiple B&O tax credit worksheet, ABC has ~~((one hundred ninety dollars))~~ \$190 of B&O tax liability left for potential application of the small business B&O tax credit. ABC does

not have any business activity taxable under RCW 82.04.255 (real estate brokers), RCW 82.04.290 (2)(a) (service and other activities), ~~((and))~~ or RCW 82.04.285 (contests of chance), so the ratio of those combined taxable amounts compared to the total of all B&O taxable amounts on the return is not ~~((fifty))~~ 50 percent or greater. ABC will refer to Table ~~((1))~~ 2 of the quarterly small business B&O tax credit table to find the "If ~~((Your Total Business and Occupation Tax))~~ your net B&O tax is" column. Following down that column, ABC finds the tax range of ~~((one hundred eighty-six to one hundred ninety-one dollars and comes over))~~ at least \$190 but less than \$195 and follows the row to the "Your ~~((Small Business Credit))~~ SBC is" column on the right, which ~~((shows that))~~ indicates a credit in the amount of ~~((twenty-five dollars is available))~~ \$140. Before calculating the total amount of tax due for the return, ABC enters its small business B&O tax credit of ~~((twenty-five dollars))~~ \$140 in the "Credits" section of the return.

For taxpayers that file electronically, the department will automatically calculate the small business credit when the taxpayer completes the online return.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 10-23-058, § 458-20-104, filed 11/12/10, effective 12/13/10. Statutory Authority: 2009 c 521. WSR 10-09-050, § 458-20-104, filed 4/15/10, effective 5/16/10. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 04-14-052, § 458-20-104, filed 6/30/04, effective 7/31/04. Statutory Authority: RCW 82.32.300. WSR 98-16-019, § 458-20-104, filed 7/27/98, effective 8/27/98; WSR 97-08-050, § 458-20-104, filed 3/31/97, effective 5/1/97; WSR 95-07-088, § 458-20-104, filed 3/17/95, effective 4/17/95; WSR 83-07-034 (Order ET 83-17), § 458-20-104, filed 3/15/83; Order ET 70-3, § 458-20-104 (Rule 104), filed 5/29/70, effective 7/1/70.]