

WSR 18-23-059
EXPEDITED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed November 16, 2018, 10:29 a.m.]

Title of Rule and Other Identifying Information: The division of child support (DCS) proposes to adopt new rules and amend existing rules in chapter 388-14A WAC to implement changes to the Uniform Interstate Family Support Act ((UIFSA) adopted in Washington as chapter 26.21A RCW) which were made to implement the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (known as the Hague Convention on Child Support).

Those statutory changes were adopted under ESSB 5498 (chapter 214, Laws of 2015), as part of Washington's state plan under Title IV-D of the federal Social Security Act. On September 29, 2014, President Obama signed into law H.R. 4980, entitled the Preventing Sex Trafficking and Strengthening Families Act ("the Act"), which became Public Law 113-183, which included a requirement that states adopt UIFSA 2008 by July 1, 2015, as part of the state plan for the child support program under Title IV-D of the federal Social Security Act, 42 U.S.C. 654 (20)(A); 42 U.S.C. 666(f).

These proposed changes describe the procedures to be followed when DCS is enforcing or modifying a convention order, which is a child support order that was issued by a tribunal in a foreign country which has ratified the Hague Convention on Child Support.

DCS proposes to amend WAC 388-14A-7100 The division of child support may register an order from a tribe or another state or country for enforcement or modification and 388-14A-7110 The division of child support may enforce interest on amounts owed under support orders entered or established in a jurisdiction other than Washington state.

DCS proposes to adopt WAC 388-14A-7000 The division of child support may register an order from a non-Washington jurisdiction for enforcement or modification, 388-14A-7005 The division of child support may register an order from a foreign country under the Hague Convention on Child Support for enforcement or modification, and 388-14A-7010 What happens at a hearing on a notice of support debt and registration under the Hague Convention on Child Support?

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapters 26.21A RCW and 388-14A WAC have long had procedures and processes for dealing with child support orders issued by a tribunal of another state, country, or jurisdiction. These orders are called foreign orders, or intergovernmental orders. The Hague Convention on Child Support, as implemented in the latest version of UIFSA, introduces a new type of foreign order called a convention order, which requires specific procedures and processes.

This proposal is intended to establish the rules for dealing with convention orders, and to clarify when the existing rules for foreign orders also apply to convention orders.

Reasons Supporting Proposal: As required under the state plan under Title IV-D of the Social Security Act, Washington adopted verbatim the 2008 version of UIFSA, amend-

ing chapter 26.21A RCW. The proposed new and amended rules adopt or incorporate by reference without material change the procedures to be followed when the state is requested to enforce or modify a child support order that was issued by a tribunal in a foreign country which has ratified the Hague Convention on Child Support.

Statutory Authority for Adoption: RCW 74.08.090, 26.23.120(2), 43.20A.550, 74.04.055, 74.04.057, 74.20A.-310, 74.20.040; 45 C.F.R. Parts 301.1, 302.36, 302.39, 303.7, 303.11, 305.63, and 308.2. RCW 34.05.353(1) authorizes the use of the expedited process to adopt these rules because: (b) The proposed rules adopt or incorporate by reference without material change Washington state statutes which were adopted as a federal requirement; and (d) the content of the proposed rules is explicitly and specifically dictated by statute.

Statute Being Implemented: RCW 26.21A.601 through 26.21A.630.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nancy Koptur, DCS Headquarters, P.O. Box 9162, Olympia, WA 98507, 360-664-5065.

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.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed new and amended rules adopt or incorporate by reference without material change Washington state statutes which were adopted as part of the requirements of our state plan under the federal Social Security Act; and the content of the proposed rules is explicitly and specifically dictated by statute.

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 DSHS Rules Coordinator, Department of Social and Health Services, P.O. Box 45850,

Olympia, WA 98504, phone 360-664-6097, fax 360-664-6185, email DSHSRPAURulesCoordinator@dshs.wa.gov, AND RECEIVED BY January 21, 2019.

November 14, 2018
Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-14A-7000 The division of child support may register an order from a non-Washington jurisdiction for enforcement or modification. (1) A child support order issued by a tribunal of another state, country, or jurisdiction is referred to in this chapter as a foreign order or an intergovernmental order. As described in subsection (3) of this section, there is a type of foreign order known as a convention order.

(2) Except for convention orders described in subsection (3) of this section, a child support order issued by a tribunal of another state or jurisdiction may be registered in this state for enforcement or modification at the request of a party to the order or at the request of the support enforcement agency of a tribe or of another state or country, using the Notice of Support Debt and Registration (NOSDR) as provided in WAC 388-14A-7100.

(3) Support orders issued by a tribunal in a foreign country which has ratified the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (known as the Hague Convention on Child Support) are known as convention orders. Convention orders may be registered in this state for enforcement or modification at the request of a party to the order or at the request of that country, using the Notice of Support Debt and Registration-Hague Convention on Child Support (NOSDR-HC) as provided in WAC 388-14A-7005.

(4) The Hague Convention on Child Support may, for the purposes of this chapter, also be known as the "Hague Convention."

NEW SECTION

WAC 388-14A-7005 The division of child support may register an order from a foreign country under the Hague Convention on Child Support for enforcement or modification. (1) A child support order issued by a tribunal of a foreign country which has ratified the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (known as the Hague Convention on Child Support) may be registered in this state for enforcement pursuant to chapter 26.21A RCW at the request of a party to the convention order or at the request of the support enforcement agency of the foreign country.

(a) Such an order is, for the purposes of this chapter, known as a "convention order."

(b) At the option of the division of child support (DCS), a convention order may be registered with the superior court pursuant to RCW 26.21A.505 or it may be registered with the administrative tribunal according to subsection (2) of this section. Either method of registration is valid.

(b) A convention order is registered when the order is filed with the registering tribunal of this state.

(c) DCS may enforce a registered convention order in the same manner and subject to the same procedures as an order issued by a tribunal of this state.

(d) DCS may assess and collect interest on amounts owed under convention orders entered or established in a jurisdiction other than the state of Washington as provided in WAC 388-14A-7110.

(e) DCS notifies the parties that it is enforcing a convention order using the Notice of Support Debt and Registration under the Hague Convention (NOSDR-HC) as provided in this section.

(2) DCS must give notice to the nonregistering party when it administratively registers a convention order. DCS gives this notice by using the Notice of Support Debt and Registration under the Hague Convention (NOSDR-HC).

(a) The notice must inform the nonregistering party:

(i) That a registered convention order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(ii) That if a party wants a hearing to contest the validity or enforcement of the registered convention order, the party must request a hearing within thirty days after service of the notice on the nonregistering party, or if the contesting party does not reside in the United States, the contest must be filed no later than sixty days after notice of the registration;

(iii) That failure to contest the validity or enforcement of the registered convention order in a timely manner will result in confirmation and enforcement of the convention order and any alleged arrearages and such failure to contest the notice precludes further contest of the convention order with respect to any matter that could have been asserted;

(iv) Of the amount of any alleged arrearages, including interest, if interest is being assessed under WAC 388-14A-7110; and

(v) Whether DCS has made a determination of controlling order under chapter 26.21A RCW, as described in WAC 388-14A-7325.

(b) The Notice of Support Debt and Registration under the Hague Convention (NOSDR-HC) must be:

(i) Served on the nonregistering party by certified or registered mail or by any means of personal service authorized by the laws of the state of Washington; and

(ii) Served on the registering party or entity by first class mail at the last known address; and

(iii) Accompanied by a copy of the registered convention order and any documents and relevant information accompanying the convention order submitted by the registering party.

(c) The effective date of a request for hearing to contest the validity or enforcement of the registered convention order is the date DCS receives the request.

(3) A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued by a foreign country that has ratified the Hague Convention on Child Support may register the convention order in this state according to RCW 26.21A.613 through 26.21A-615.

(a) The convention order must be registered as provided in subsection (1)(b) if the order has not yet been registered.

(b) A petition for modification may be filed at the same time as a request for registration, or later. The petition must specify the grounds for modification.

(c) DCS may enforce a convention child support order registered for purposes of modification, as if a tribunal of this state had issued the order, but the registered convention order may be modified only if the requirements of RCW 26.21A.-550 are met.

(4) Interpretation of the registered convention order is governed by RCW 26.21A.515.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-14A-7010 What happens at a hearing on a notice of support debt and registration under the Hague Convention on Child Support? (1) After the service of a Notice of Support Debt and Registration under the Hague Convention (NOSDR-HC) as described in WAC 388-14A-7005, either party to the convention order may object and request a hearing on the notice.

(2) A hearing under this section is for the limited purpose of determining if the nonregistering party (also called the contesting party for the purposes of this section) can prove one or more of the defenses listed in RCW 26.21A.617.

(3) If the contesting party presents evidence establishing a full or partial defense under 26.21A.617, the presiding officer must:

(a) Not limit the right of the division of child support (DCS) to enforce any severable parts of the convention order;

(b) Continue the proceeding to allow the parties to gather additional relevant evidence; or

(c) Issue other appropriate orders.

(4) As provided in RCW 26.21A.620, DCS may enforce an uncontested portion of the registered convention order by all remedies available under the law of this state before there is a final administrative order.

(5) If the contesting party does not establish a defense under 26.21A.617 to the validity or enforcement of the convention order, the presiding officer must issue an order confirming the registered convention order.

(6) The other party to the convention order may participate as a party to any hearing under this section.

(7) The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered convention support order:

(a) Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

(b) The issuing tribunal lacked personal jurisdiction consistent with RCW 26.21A.100;

(c) The order is not enforceable in the issuing country;

(d) The order was obtained by fraud in connection with a matter of procedure;

(e) A record transmitted in accordance with RCW 26.21A.613 lacks authenticity or integrity;

(f) A proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;

(g) The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under this chapter in this state;

(h) Payment, to the extent alleged arrears have been paid in whole or in part;

(i) In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

(i) If the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

(ii) If the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or

(j) The order was made in violation of RCW 26.21A.-625.

(8) If the presiding officer does not recognize the convention support order under subsection (7)(b), (7)(d) or (7)(i) of this section, the presiding officer may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new convention support order.

(9) DCS must take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under RCW 26.21A.-607.

AMENDATORY SECTION (Amending WSR 13-01-075, filed 12/18/12, effective 1/18/13)

WAC 388-14A-7100 The division of child support may register an order from a tribe or another state or country for enforcement or modification. (1) A child support order or an income-withholding order for support issued by a tribunal of another state or jurisdiction may be registered in this state for enforcement pursuant to chapter 26.21A RCW at the request of a party to the order or at the request of the support enforcement agency of an Indian tribe or of another state or country.

(a) At the option of the division of child support (DCS), the support order or income-withholding order may be registered with the superior court pursuant to RCW 26.21A.505 or it may be registered with the administrative tribunal according to subsection (2) of this section. Either method of registration is valid.

(b) A support order or income-withholding order issued in another state or jurisdiction is registered when the order is filed with the registering tribunal of this state.

(c) DCS may enforce a registered order issued in another state or jurisdiction in the same manner and subject to the same procedures as an order issued by a tribunal of this state.

(d) DCS may assess and collect interest on amounts owed under support orders entered or established in a juris-

diction other than the state of Washington as provided in WAC 388-14A-7110.

(e) DCS may notify the parties that it is enforcing a non-Washington support order using the notice of support debt and demand for payment under WAC 388-14A-3304 or using the notice of support debt and registration as provided in this section and in WAC 388-14A-7110. Either method of notice is valid.

(2) DCS must give notice to the nonregistering party when it administratively registers a support order or income-withholding order issued in another state or jurisdiction. DCS gives this notice with the Notice of Support Debt and Registration (NOSDR).

(a) The notice must inform the nonregistering party:

(i) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(ii) That if a party wants a hearing to contest the validity or enforcement of the registered order, the party must request a hearing within twenty days after service of the notice on the nonregistering party within Washington state. If the nonregistering party was served with the notice outside of Washington state, the party has sixty days after service of the notice to request a hearing to contest the validity or enforcement of the registered order;

(iii) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted;

(iv) Of the amount of any alleged arrearages, including interest, if interest is being assessed under WAC 388-14A-7110; and

(v) Whether DCS has made a determination of controlling order under chapter 26.21A RCW, as described in WAC 388-14A-7325.

(b) The notice must be:

(i) Served on the nonregistering party by certified or registered mail or by any means of personal service authorized by the laws of the state of Washington; and

(ii) Served on the registering party by first class mail at the last known address; and

(iii) Accompanied by a copy of the registered order and any documents and relevant information accompanying the order submitted by the registering party.

(c) The effective date of a request for hearing to contest the validity or enforcement of the registered order is the date DCS receives the request.

(3) A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state or jurisdiction may register the order in this state according to RCW 26.21A.540 through 26.21A-550.

(a) The order must be registered as provided in subsection (1)(a) if the order has not yet been registered.

(b) A petition for modification may be filed at the same time as a request for registration, or later. The petition must specify the grounds for modification.

(c) DCS may enforce a child support order of another state or jurisdiction registered for purposes of modification,

as if a tribunal of this state had issued the order, but the registered order may be modified only if the requirements of RCW 26.21A.550 are met.

(4) Interpretation of the registered order is governed by RCW 26.21A.515.

(5) For information about the registration of a child support order under the 23 November 2007 Convention on the International Recover of Child Support and Other Forms of Family Maintenance, see WAC 388-14A-7005.

AMENDATORY SECTION (Amending WSR 13-01-075, filed 12/18/12, effective 1/18/13)

WAC 388-14A-7110 The division of child support may enforce interest on amounts owed under support orders entered or established in a jurisdiction other than Washington state. (1) The division of child support (DCS) may accept an intergovernmental request to enforce interest when:

(a) The request is from:

(i) Another state's IV-D agency;

(ii) An Indian tribe;

(iii) A foreign country which has entered into a reciprocal agreement with the United States of America or with the state of Washington; ~~((or))~~

(iv) A foreign country which has ratified the Hague Convention on Child Support; or

(v) A custodial parent (CP) or noncustodial parent (NCP) who resides outside of Washington state who has filed a petition under the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW.

(b) The party requesting that DCS enforce interest provides a calculation of the interest claimed which has been certified by a IV-D agency or a certified public accountant (CPA); and

(c) The support order was entered or established in a jurisdiction other than Washington state.

(2) When a foreign support order has been submitted for enforcement under UIFSA, DCS may, at its option, either:

(a) Use the notice of support debt and demand for payment to enforce interest on an out-of-state support order. See WAC 388-14A-3304 for the rules regarding the notice of support debt and demand for payment; or

(b) Use a notice of support debt and registration to enforce interest on the foreign order. See WAC 388-14A-7100 and 388-14A-7005 for the rules regarding registration of a foreign order.

(3) When an out of state order has been submitted for registration for enforcement and modification under UIFSA, DCS uses a notice of support debt and registration to enforce interest on the out of state order. See WAC 388-14A-7100 and 388-14A-7005 for the rules regarding registration of a foreign support order.

(4) Any hearing held on a notice of support debt and registration which includes a claim for interest is conducted in accordance with WAC 388-14A-7125 ~~((and))~~, 388-14A-7115, and 388-14A-7005.

(a) WAC 388-14A-7135 describes the procedures for confirmation of the registered order.

(b) WAC 388-14A-7135 describes the effect of confirmation of the registered order.

(5) At any time after the notice of support debt and registration becomes a final administrative order, DCS may update the amount of interest as provided in WAC 388-14A-7120.

WSR 18-23-060
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed November 16, 2018, 10:36 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-166 (Rule 166) Hotels, motels, boarding houses, rooming houses, resorts, hostels, trailer camps, and similar lodging businesses.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend Rule 166 to conform to changes required by 2SHB 2015, 2018 regular session (chapter 245, Laws of 2018). This legislation modifies the lodging excise tax to remove the exemption for premises with fewer than sixty lodging units and to tax certain vacation rentals, short-term home-sharing arrangements, and other compensated use or occupancy of dwellings.

Copies of draft rules are available for viewing and printing on our web site at Rule making agenda.

Reasons Supporting Proposal: To recognize 2018 legislation.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 36.100.040.

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: Tim Danforth, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1538; Implementation and Enforcement: Randy Simmons, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The content of the proposed rule is explicitly and specifically dictated by statute.

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 Tim Danforth, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, email TimD@dor.wa.gov, AND RECEIVED BY January 21, 2019.

November 16, 2018

Erin T. Lopez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-22-085, filed 11/3/15, effective 12/4/15)

WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, hostels, trailer camps, short-term rentals and similar lodging businesses. (1) **Introduction.** This rule explains the taxation of persons operating hotels, motels, bed and breakfast facilities, and similar businesses that provide lodging and related services to transient tenants.

(a) **References to related rules.** The department of revenue (department) has adopted other rules that may contain additional relevant information:

(i) WAC 458-20-111 (Advances and reimbursements);

(ii) WAC 458-20-118 (Sale or rental of real estate, license to use real estate);

(iii) WAC 458-20-159 (Consignees, bailees, factors, agents and auctioneers);

(iv) WAC 458-20-165 (Laundry, dry cleaning, linen and uniform supply, and self-service and coin-operated laundry services);

(v) WAC 458-20-167 (Educational institutions, school districts, student organizations, and private schools);

(vi) WAC 458-20-168 (Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities);

(vii) WAC 458-20-187 (Coin operated vending machines, amusement devices and service machines); and

(viii) WAC 458-20-245 (Taxation of competitive telephone service, telecommunications service, and ancillary service).

(b) **Examples.** This rule includes examples that identify a set of facts and then state a conclusion. The examples are only a general guide. The department will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority.

(2) This rule explains the business and occupation (B&O) tax, retail sales tax, special hotel/motel tax, the convention and trade center tax, the tourism promotion area charge, and the taxation of emergency housing furnished to homeless people.

(a) This rule applies to persons operating hotels, motels, short-term rentals, and the following businesses(-):

(i) Trailer camps and recreational vehicle parks that rent space to transient tenants for house trailers, campers, recreational vehicles, mobile homes, tents, and similar accommodations.

(ii) Educational institutions that sell overnight lodging to persons other than students. Information regarding educational institutions is provided in WAC 458-20-167 (Educa-

tional institutions, school districts, student organizations, and private schools).

(iii) Private lodging houses, dormitories, bunkhouses, and similar accommodations operated by or on behalf of a business or school solely for the accommodation of employees of the business or students of the school, which are not held out to the public as a place where sleeping accommodations may be obtained.

(b) This rule does not apply to persons operating the following businesses(-):

(i) Hospitals, sanitariums, nursing homes, rest homes, and similar institutions. Information regarding operating these establishments is provided in WAC 458-20-168 (Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities).

(ii) Apartments or condominiums where the rental is for one month or more. Information regarding rentals for one month or more and the distinction between a rental of real estate and the license to use real estate is provided in WAC 458-20-118 (Sale or rental of real estate, license to use real estate).

(3) **Transient tenant defined.** The term "transient tenant" 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 for less than one month, or less than thirty continuous days if the rental period does not begin on the first day of the month. Providing lodging for a continuous period of one month or more to a guest, resident, or other occupant is a rental or lease of real property. It is presumed that when lodging is provided for a continuous period of one month or more, or thirty continuous days or more if the rental period does not begin on the first day of the month, the guest, resident, or other occupant purchasing the lodging is a nontransient upon the thirtieth day without regard to a specific lodging unit occupied throughout the continuous thirty-day period. An occupant who contracts in advance and remains in continuous occupancy for the initial thirty days will be considered a nontransient from the first day of occupancy provided in the contract.

(4) **Business and occupation tax (B&O).** Where lodging is sold to a nontransient tenant, the transaction is a rental of real estate and (~~exempt from~~) not subject to B&O tax. See WAC 458-20-118 (Sale or rental of real estate, license to use real estate). Sales of lodging and related services to transient tenants are subject to B&O tax, including transactions that may have been identified or characterized as membership fees or dues.

(a) **Retailing classification.** Gross income derived from the following activities provided to transient tenants is subject to the retailing B&O tax:

- Rental of rooms for lodging;
- Rental of radio and television sets;
- Rental of rooms, space, and facilities not for lodging, such as ballrooms, display rooms, meeting rooms, and similar accommodations;
- Automobile parking or storage; and
- Sale or rental of tangible personal property at retail.

More information regarding retail sales is provided in subsection (5) of this rule discussing retail sales tax.

(b) **Service and other activities classification.** Commissions, amounts derived from accommodations not available to the public, and certain lump sum fees charged for multiple services are taxable under the service and other activities classification of the B&O tax. Gross income derived from the following business activities also is subject to service and other B&O tax.

(i) Commission income received by hotels, motels, and similar businesses from other businesses providing a service to their tenants. The following are examples of commission income that is subject to the service and other activities B&O tax.

(A) Commission income received from acting as a laundry agent for tenants when someone other than the hotel provides the laundry service. Information regarding these commissions is provided in WAC 458-20-165 (Laundry, dry cleaning, linen and uniform supply, and self-service and coin-operated laundry services).

(B) Commission income received from telephone companies for long distance telephone calls when the hotel or motel merely acts as an agent and commission income received from coin-operated telephones. Information regarding these commissions is provided in WAC 458-20-159 (Consignees, bailees, factors, agents and auctioneers) and WAC 458-20-245 (Taxation of competitive telephone service, telecommunications service, and ancillary service). Refer to subsection (5) of this rule for a discussion of telephone service fees subject to retail sales tax.

(C) Commission income or license fees for permitting a satellite antenna to be installed on the premises or for permitting a broadcaster or cable operator to make sales to the transient tenants staying at the hotel or motel are subject to service and other activities B&O tax.

(D) Commission income from the rental of videos for use by tenants staying at the hotel or motel when the hotel or motel operator is making the sales as an agent for a seller.

(E) Commission income received from the operation of amusement devices. Information regarding amusement devices is provided in WAC 458-20-187 (Coin operated vending machines, amusement devices and service machines).

(ii) Gross income derived from the following business activities is subject to the service and other activities B&O tax.

(A) The rental of sleeping accommodations by private lodging houses (including dormitories, bunkhouses, and similar accommodations) operated by or on behalf of a business for its employees, which are not held out to the public as a place where sleeping accommodations may be obtained.

(B) Deposits retained by the lodging business as a penalty charged to a transient tenant for failure to timely cancel a reservation.

(5) **Retail sales tax.** Persons providing lodging and other services generally must collect and remit retail sales tax on the gross selling price of the lodging and other services. They must pay retail sales or use tax on all items they purchase for use in providing their services.

(a) **Lodging.** All fees charged for lodging and related services to transient tenants are retail sales. Included are fees charged for vehicle parking and storage and for space and

other facilities, including fees charged by a trailer camp for utility services.

(i) A tenant who does not contract in advance to stay at least thirty days is not entitled to a refund of retail sales tax if the rental period later extends beyond thirty days.

Example: Assume a tenant rents the same motel room on a weekly basis. Further assume the tenant continues to extend occupancy on a weekly basis until the tenant finally exceeds thirty days. Under these assumed facts, the tenant is considered a transient for the first twenty-nine days of occupancy and must pay retail sales tax on the rental fees. The rental fees are exempt from retail sales tax beginning on the thirtieth day. The tenant is not entitled to a refund of retail sales taxes paid on the rental fees for the first twenty-nine days.

(ii) A business providing transient-tenant lodging must complete the "transient rental income" information section of the combined excise tax return. The four digit location code must be listed along with the gross income received from transient-tenant lodging subject to retail sales tax for each facility located within a participating city or county.

(b) **Meals and entertainment.** All fees charged for food, beverages, and entertainment activities are retail sales subject to retail sales tax.

(i) Fees charged for related services including, but not limited to, room service, banquet room services, and service charges and gratuities that are agreed to in advance by customers or added to their bills by the service provider are subject to retail sales tax.

(ii) If meals sold under a promotion such as a "two meals for the price of one," the taxable selling price is the actual amount received as payment for the meals.

(iii) Meals sold to employees are subject to retail sales tax. Information regarding meals furnished to employees is provided in WAC 458-20-119 (Sales by caterers and food service contractors).

(iv) Sale of food and other items sold through vending machines are retail sales. Information regarding income from vending machines and the distinction between taxable and nontaxable sales of food products is provided in WAC 458-20-187 (Coin operated vending machines, amusement devices and service machines) and WAC 458-20-244 (Food and food ingredients).

(v) When a lump sum fee is charged to nontransient tenants for providing both lodging and meals, retail sales tax must be collected upon the fair selling price of such meals. Unless accounts are kept showing the fair selling price, the tax will be computed upon double the cost of the meals served. The cost includes the price paid for food and drinks served, the cost of preparing and serving meals, and all other costs incidental thereto, including an appropriate portion of overhead expenses.

(vi) Cover fees charged for dancing and other entertainment activities are retail sales.

(vii) Fees charged for providing extended television reception to transient tenants are retail sales.

(c) **Laundry services.** Fees charged for laundry services provided by a hotel/motel in the hotel's name are retail sales. Fees charged to tenants for self-service laundry facilities are not retail sales, but the gross income derived from these fees is subject to service and other activities B&O tax.

(d) **Telephone charges.** Telephone and "message service" fees charged to transient tenants are retail sales, but commission income received from telephone companies for long distance telephone calls when the hotel or motel merely acts as an agent is not subject to retail sales tax.

If the hotel or motel is acting as an agent for a telephone service provider that provides long distance telephone service to the transient tenant, the actual telephone fees charged are not taxable income to the hotel or motel. These amounts are advances and reimbursements. Information on advances and reimbursements is provided in WAC 458-20-111 (Advances and reimbursements). Any additional fee added by the hotel or motel to the actual long distance telephone fee, however, is a retail sale.

(e) **Telephone lines.** If the hotel or motel leases telephone lines and then provides telephone services for a fee to either its transient or nontransient tenants, these fees are retail sales. In this case the hotel or motel is in the telephone business. Information regarding the telephone business is provided in WAC 458-20-245 (Taxation of competitive telephone service, telecommunications service, and ancillary service). The hotel or motel may give a reseller permit for purchases made to the provider of the leased lines and is not subject to the payment of retail sales tax to the provider of the leased lines.

(f) **Rentals.** Renting tangible personal property such as movies and sports equipment is a retail sale.

(g) **Purchases of tangible personal property for use in providing lodging and related services.** All purchases of tangible personal property for use in providing lodging and related services are retail sales. The fee charged for lodging and related services is for services rendered and not for the resale of any tangible property.

(i) Purchases subject to retail sale tax include, but are not limited to, beds, room furnishings, linens, towels, soap, shampoo, restaurant equipment, and laundry supply services. Purchases, such as small toiletry items, are included even though they may be provided for guests to take home if not used.

(ii) Sales of prepared meals or other prepared items are subject to retail sales tax. Information regarding the sales of food products is provided in WAC 458-20-244 (Food and food ingredients).

(h) **Sales to the United States government.** Sales made directly to the United States government are not subject to retail sales tax. Sales to employees of the federal government are taxable even if the employee ultimately will be reimbursed for the lodging fee.

(i) **Payment by government voucher or check.** If the lodging fee is paid by United States government voucher or United States government check payable directly to the hotel or motel, the sale is presumed to be a tax-exempt sale made directly to the federal government.

(ii) **Charges to government credit card.** Various United States government contracted credit cards are used to make payment for purchases of goods and services by or for the United States government. Specific information about determining when a purchase by government credit card is a tax-exempt purchase by the United States government is available via the department's internet web site at <http://dor>.

wa.gov. (See the department's lodging industry guide.) For specific information about determining when payment is the direct responsibility of the United States government or the employee, you may contact the department's taxpayer services division at <http://dor.wa.gov/content/ContactUs/> or:

Department of Revenue
Taxpayer Services
P.O. Box 47478
Olympia, WA 98504-7478

(6) **Special hotel/motel tax.** Some locations in the state impose ~~((a))~~ special hotel/motel ~~((tax))~~ taxes. (These taxes are imposed under chapters 67.28 and 36.100 RCW.) If a business is in one of those locations, an additional tax is charged and reported under the special hotel/motel portion of the tax return. The four digit location code, the gross-selling price for providing the lodging, and the tax rate must be completed for each location where the lodging is provided. The tax applies without regard to the number of lodging units except that the tax imposed under ~~((chapter 36.100))~~ RCW 36.100.040(1) applies only if there are forty or more lodging units. The tax only applies to the fee charged for the rooms used for lodging by transient tenants. Additional fees charged for telephone services, laundry, or other incidental charges are not subject to the special hotel/motel tax. Nor is the fee charged for use of meeting rooms, banquet rooms, or other special use rooms subject to this tax. The tax applies, however, to fees charged for use of camping and recreational vehicle sites.

(7) **Convention and trade center tax.** Subject to the exemptions in (b) of this subsection, businesses located in King County selling lodging to transient tenants ~~((that have sixty or more transient lodging units))~~ including, but not limited to, any short-term rental, must charge their customers the convention and trade center tax and report the tax under the "convention and trade center" portion of the combined excise tax return.

~~((a))~~ (A business having more than sixty units that rents to both transient tenants and nontransient tenants, is subject to the convention and trade center tax only if the business has at least sixty rooms that are available or being used to provide lodging to transient tenants.

~~Example: Assume Lodging House has one hundred forty total individual occupancy rooms available to the public and rents ninety-five of the rooms to nontransient tenants. Under these assumed facts, Lodging House is not subject to the convention and trade center tax because only forty-five rooms are available or being used for transient lodging units.~~

~~((b))~~ The convention and trade center tax applies only to the fees charged for the rooms, or camping or recreational vehicle sites, used to provide lodging for transient tenants. Each campsite is considered a single unit.

Additional fees charged for telephone services, laundry, or other incidental charges are not subject to the convention and trade center tax. Fees charged for the use of meeting rooms, banquet rooms, or other special use rooms are also not subject to the convention and trade center tax. ~~((The convention and trade center tax applies, however, to fees charged for camping or recreational vehicle sites. Each camp site is considered a single unit.~~

~~((e)) Exemptions. Businesses having fewer than sixty transient lodging units or businesses classified as a hostel are exempt from the convention and trade center tax. For purposes of this exemption:))~~

~~((b)) Exemptions. The following are exempt from the convention and trade center tax:~~

~~((i)) A business in a town with a population of less than three hundred people that has fewer than sixty rooms that are available or being used to provide lodging to transient tenants, regardless of whether the business also rents units to nontransient tenants and the combined number of transient and nontransient lodging units is sixty rooms or more;~~

~~((ii)) Businesses classified as hostels;~~

~~((ii)) Any lodging that is concurrently subject to a tax on engaging in the business of being a short-term rental operator imposed by a city in which a convention and trade center is located;~~

~~((iv)) Any lodging that is operated by a university health care system exclusively for family members of patients; and~~

~~((v)) Any lodging that is operated as a charity described in ~~((c))~~(iii)(B) of this subsection, is otherwise exempted in this subsection, or is emergency lodging to homeless people as described in subsection (9) of this rule.~~

~~((c)) Definitions. The definitions in this subsection apply to the convention and trade center tax:~~

~~((i)) "Hostel" means a structure or facility where a majority of the rooms for sleeping accommodations are hostel dormitories containing a minimum of four standard beds designed for single-person occupancy within the facility. Hostel accommodations are supervised and must include at least one common area and at least one common kitchen for guest use.~~

~~((ii)) "Hostel dormitory" means a single room, containing four or more standard beds designed for single-person occupancy, used exclusively as nonprivate communal sleeping quarters, generally for unrelated persons, where such persons independently acquire the right to occupy individual beds, with the operator supervising and determining which bed each person will occupy.~~

~~((iii)) "Short-term rental" means a lodging use, that is not a hotel or motel, in which a short-term rental operator offers or provides a dwelling unit, or portion thereof, to a guest or guests for a fee for fewer than thirty consecutive nights. The term "short-term rental" does not include:~~

~~((A)) A dwelling unit, or portion thereof, that the same person uses for thirty or more consecutive nights; and~~

~~((B)) A dwelling unit, or portion thereof, that is operated by an organization or government entity that is registered as a charitable organization with the secretary of state, state of Washington, and/or is classified by the federal Internal Revenue Service as a public charity or a private foundation, and provides temporary housing to individuals who are being treated for trauma, injury, or disease and/or their family members.~~

~~((d)) The four digit location code, gross-selling price for the lodging, and the tax rate must be completed for each location where the lodging is provided.~~

~~((8)) **Tourism promotion area charge.** A legislative authority as defined in RCW 35.101.010 may impose a charge on the activity of providing lodging by a business~~

located in the tourism promotion area, except for temporary medical housing that is exempt under RCW 82.08.997 (Exemptions—Temporary medical housing). The charge is administered by the department and must be collected by the business providing the lodging from the transient tenant. The charge is not subject to the sales tax rate limitations of RCW 82.14.410. To determine whether your lodging business must collect and remit the charge, refer to the special notices for tourism promotion areas at http://dor.wa.gov/content/GetAFormOrPublication/PublicationBySubject/tax_sn_main.aspx or the lodging industry guide at <http://dor.wa.gov/content/doingbusiness/BusinessTypes/Industry/lodging/>.

(9) Providing emergency lodging to homeless people.

The fee charged for providing emergency lodging to homeless people purchased via a shelter voucher program administered by cities, towns, counties, or private organizations that provide emergency food and shelter services is exempt from the retail sales tax, the convention and trade center tax, and the special hotel/motel tax. This form of payment does not influence the required minimum of transient rooms available for use as transient-lodging units under the "convention and trade center tax" or under the "special hotel/motel tax."