

WSR 24-06-058

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed March 4, 2024, 8:01 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-144 Printing industry.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue (DOR) is amending WAC 458-20-144 to incorporate 2023 legislation, E2SSB 5199. E2SSB 5199 provides a B&O tax preference in the form of a B&O tax exemption for amounts received by any person engaged in printing and/or publishing newspapers, or publishing eligible digital content. See RCW 82.04.759.

Reasons Supporting Proposal: The rule is being updated to incorporate changes resulting from 2023 legislation, E2SSB 5199.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060.

Statute Being Implemented: RCW 82.04.759.

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

Name of Proponent: DOR, governmental.

Name of Agency Personnel Responsible for Drafting: Tiffany Do, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1558; Implementation and Enforcement: John Ryser, 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:

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.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is applicable to this rule update because DOR is incorporating changes resulting from 2023 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 Tiffany Do, DOR, P.O. Box 47467, Olympia, WA 98504-7467, phone 360-534-1558, fax 360-534-1606, email TiffanyD@dor.wa.gov, AND RECEIVED BY May 6, 2024.

March 4, 2024
Brenton Madison
Rules Coordinator

OTS-5257.1

AMENDATORY SECTION (Amending WSR 18-13-094, filed 6/19/18, effective 7/20/18)

WAC 458-20-144 Printing industry. (1) **Introduction.** This ((~~section~~)) rule discusses the taxability of the printing industry. ((~~For information on the taxability of mailing bureau services and a discussion of direct mail, refer to WAC 458-20-141. For information on the taxability of printers and publishers of newspapers, magazines, and periodicals, refer to WAC 458-20-143~~)) Readers may want to refer to other rules for additional information, including:

(a) WAC 458-20-141 Duplicating activities and mailing bureaus;
(b) WAC 458-20-143 Printers and publishers of newspapers, magazines, and periodicals;
(c) WAC 458-20-102 Reseller permits;
(d) WAC 458-20-13601 Manufacturers and processors for hire—Sales and use tax exemptions for machinery and equipment.

(2) **Definition.** The phrase "printing industry" includes letterpress, offset-lithography, and gravure processes as well as multi-graph, mimeograph, autotyping, addressographing and similar activities.

(3) **Business and occupation (B&O) tax.**

(a) Printers are subject to the ((~~business and occupation~~)) B&O tax under the printing and publishing classification upon the gross income of the business.

(b) ((~~Effective~~)) Printers of newspapers. From July 1, 2009, through December 31, 2023, printers of newspapers are taxable under the publication of newspapers classification of the B&O tax upon the gross income of the business.

Effective January 1, 2024, printers of newspapers are exempt from B&O tax under RCW 82.04.759 on the amounts received from engaging in printing a newspaper. The exemption amount is reduced by an amount equal to the value of any expenditure made by the person during the tax reporting period. For purpose of this section, "expenditure" has the meaning provided in RCW 42.17A.005.

Persons reporting income under the publication of newspapers classification of the B&O tax ((~~must file a complete~~)), or claiming the B&O tax exemption for income received from engaging in printing a newspaper on or after January 1, 2024, are required to electronically file an annual tax performance report with the department by May 31st of the following year. ((In addition, such persons must electronically file with the department all reports, returns, and any other forms.)) Refer to RCW ((~~82.32.600~~)) 82.32.534 and WAC 458-20-267 (Annual tax performance reports for certain tax preferences) for the specific guidelines and requirements.

(c) **Doing business inside and outside the state.** RCW 82.04.460 requires that advertising income earned by printers derived from business activities performed within Washington be apportioned to this state for tax purposes. Refer to chapter 23 (E2SSB 6143), Laws of 2010 1st sp. sess. Part I for information on apportioning advertising income.

(4) **Retail sales tax.**

(a) The printing or imprinting of advertising circulars, books, briefs, envelopes, folders, posters, racing forms, tickets, and other

printed matter, whether upon special order or upon materials furnished either directly or indirectly by the customer is a retail sale and subject to the retail sales tax, (~~providing~~) provided the customer either consumes, or distributes such articles free of charge, and does not resell such articles in the regular course of business. The retail sales tax is computed upon the total charge for printing, and the printer may not deduct the cost of labor, author's alterations, or other service charges in performing the printing, even though such charges may be stated or shown separately on invoices.

(b) Sales of printed matter to advertising agencies who purchase for their own use or for the use of their clients, and not for resale in the regular course of business, are sales for consumption and subject to the retail sales tax.

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

(d) Sales of school annuals and similar publications by printers to school districts, private schools or student organizations therein are subject to the retail sales tax.

(e) Sales by printers of books, envelopes, folders, posters, racing forms, stationery, tickets and other printed matter to dealers for resale in the regular course of business are wholesale sales. Such sales are not subject to retail sales tax when the seller obtains (~~a resale certificate for sales made before January 1, 2010, or~~) a reseller permit (~~for sales made on or after January 1, 2010,~~) from the buyer to document the wholesale nature of the sale as provided in (~~WAC 458-20-102A (Resale certificates) and~~) WAC 458-20-102 (Reseller permits). (~~Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.~~)

(f) Charges made by bookbinders or printers for imprinting, binding or rebinding of materials for consumers are subject to the retail sales tax.

(g) Sales to printers of equipment, supplies and materials which do not become a component part or ingredient of the finished printed matter sold or which are put to "intervening use" before being resold are subject to the retail sales tax unless specifically exempt (see subsection (5) of this section). This includes, among others, sales of fuel, furniture, and lubricants.

(h) Sales to printers of paper stock and ink which become a part of the printed matter sold are sales for resale and are not subject to retail sales tax when the buyer provides (~~a resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or~~) a reseller permit (WAC 458-20-102) (~~for sales made on or after January 1, 2010,~~) to the seller.

(5) **Exemption for sales of computer equipment to printers.** RCW 82.08.806 and 82.12.806 provide a retail sales and use tax exemption to a printer or publisher(~~,~~) for the following:

(a) Purchase and use of computer equipment(~~,~~including) primarily used in printing or publishing of any printed materials. This includes for repair parts and replacement parts (~~for~~) of such qualifying equipment(~~,~~when the computer equipment is used primarily in the printing or publishing of any printed material, or to). "Computer equipment" has the same meaning as defined in RCW 82.08.806 (3) (b).

"Primarily" means greater than 50 percent as measured by time. RCW 82.08.806 (3)(d).

(b) Sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the computer equipment.

~~((This exemption applies))~~ These exemptions apply only to computer equipment not otherwise exempt under RCW 82.08.02565.

(6) Commissions and discounts.

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

(b) A "commission" paid by a seller constitutes an expense of doing business and is not deductible from the measure of ~~((tax under either business and occupation))~~ B&O tax or retail sales tax. On the other hand, a "discount" is a deduction from an established selling price allowed to buyers, and a bona fide discount is deductible under both ~~((these classifications))~~ B&O tax and retail sales tax.

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

(i) The allowance taken by an advertising agency will be deductible as a discount in the computation of the printer's liability only in the event that the printer bills the charge on a net basis; i.e., less the discount.

(ii) Where the printer bills the gross charge to the agency, and the advertiser pays the sales tax measured by the gross charge, no deduction will be allowed, irrespective of the fact that in payment of the account the printer actually receives from the agency the net amount only; i.e., the gross billing, less the commission retained by the agency. In all cases the commission received is taxable to the agency.