



# RULE-MAKING ORDER PERMANENT RULE ONLY

## CR-103P (December 2017) (Implements RCW 34.05.360)

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STATE OF WASHINGTON  
FILED

DATE: May 23, 2018

TIME: 7:55 AM

WSR 18-11-126

**Agency:** Department of Revenue

**Effective date of rule:**

**Permanent Rules**

31 days after filing.

Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

Yes  No If Yes, explain:

**Purpose:** The Department is amending WAC 458-20-183 to incorporate changes due to legislation passed in 2015 (House Bill 1550). This legislation became effective on January 1, 2016 and resulted in significant changes to the taxability of these activities and services.

**Citation of rules affected by this order:**

New:

Repealed:

Amended: WAC 458-20-183 ~~Amusement, recreation, and physical fitness services~~ Recreational services and activities

Suspended:

**Statutory authority for adoption:** RCW 82.32.300 and 82.01.060(2)

**Other authority:**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 18-08-051 on March 29, 2018 (date).

Describe any changes other than editing from proposed to adopted version: None

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other: This rule is not a significant legislative rule as defined by RCW 34.05.328.

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	<u>1</u>	Repealed	___

**The number of sections adopted at the request of a nongovernmental entity:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted on the agency's own initiative:**

New	___	Amended	<u>1</u>	Repealed	___
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	___	Amended	<u>1</u>	Repealed	___
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**The number of sections adopted using:**

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	<u>1</u>	Repealed	___

**Date Adopted:** May 23, 2018

**Name:** Erin T. Lopez

**Title:** Rules Coordinator

**Signature:**



AMENDATORY SECTION (Amending WSR 95-22-100, filed 11/1/95, effective 12/2/95)

**WAC 458-20-183 ((Amusement, recreation, and physical fitness services.)) Recreational services and activities. ((-1) Introduction.** This section provides tax reporting instructions for persons who provide amusement, recreation, and physical fitness services, including persons who receive their income in the form of dues and initiation fees. Section 301, chapter 25, Laws of 1993 sp. sess., amended RCW 82.04.050 to include as a retail sale "physical fitness services." This change became effective July 1, 1993. Physical fitness services were previously taxed under the service and other business activities classification. Amusement and recreation services were retail sales prior to the 1993 law amendment and the tax classification remains unchanged for these activities.

(a) Local governmental agencies that provide amusement, recreation, and physical fitness services should also refer to WAC 458-20-189 (Sales to and by the state of Washington, counties, cities, school districts, and other municipal subdivisions).

(b) Persons engaged in operating coin operated amusement devices should refer to WAC 458-20-187 (Coin operated vending machines, amusement devices and service machines).

(c) Persons engaged in providing camping and outdoor living facilities should refer to WAC 458-20-118 (Sale or rental of real estate, license to use real estate) and WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.).

(2) **Definitions.** The following definitions apply throughout this section:

(a) "Amounts derived" means gross income from whatever source and however designated. It includes "gross proceeds of sales" and "gross income of the business" as those terms are defined by RCW 82.04.070 and 82.04.080, respectively. It shall also include income attributable to bona fide "initiation fees" and bona fide "dues."

(b) "Amusement and recreation services" include, but are not limited to: Golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, and all batting cages. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.

(c) "Any additional charge" means a price or payment other than bona fide initiation fees or dues, paid by persons for particular goods and services received. The additional charge must be reasonable and any business and/or sales taxes must be paid upon such charges in order to qualify other income denominated as "bona fide dues" or "fees" to be deductible. The reasonableness of any additional charge will be based on one of the following two criteria:

(i) It must cover all costs reasonably related to furnishing the goods or services; or

(ii) It must be comparable with charges made for similar goods or services by other comparable businesses.

(d) "~~Direct overhead costs~~" include all items of expense immediately associated with the specific goods or services for which the costs of production method is used. For example, the salary of a swimming pool lifeguard or the salary of a golf club's greenskeeper are both direct overhead costs in providing swimming and golfing respectively.

(e) "~~Dues~~" are those amounts periodically paid by members solely for the purpose of entitling those persons to continued membership in the club or similar organization. It shall not include any amounts paid for goods or services rendered to the member by the club or similar organization.

(f) "~~Entry fees~~" means those amounts paid solely to allow a person the privilege of entering a tournament or other type of competition. The term does not include any amounts charged for the underlying activity.

(g) "~~Goods or services rendered~~" shall include those amusement, recreation, and physical fitness services defined to be retail sales in (m) of this subsection. Also see, WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.) and WAC 458-20-244 (Food products). The term shall include the totality or aggregate of goods or services available to members. It is not determinative that some members actually receive more goods or actually enjoy more services than others so long as the totality of the goods or services offered are made available to members in general.

(h) "~~Indirect overhead costs~~" means overhead costs incurred by the service provider that are not immediately associated with the specific goods and services. These costs include a pro rata share of total operating costs, including all executive salaries and employee salaries that are not "~~direct overhead costs~~" as that term is defined in (d) of this subsection, as well as a pro rata share of administrative expenses and the cost of depreciable capital assets.

(i) "~~Initiation fees~~" means those amounts paid solely to initially admit a person as a member to a club or organization. "~~Bona fide initiation fees~~" within the context of this rule shall include only those one-time amounts paid which genuinely represent the value of membership in a club or similar organization. It shall not include any amount paid for or attributable to the privilege of receiving any goods or services other than mere nominal membership.

(j) "~~League fees~~" means those amounts paid solely for the privilege of allowing a person or a person's team to join an association of sports teams or clubs that compete chiefly amongst themselves. The term does not include any amounts charged for the underlying activity.

(k) "~~Nonprofit youth organization~~" means a nonprofit organization engaged in character building of youth which is exempt from property tax under RCW 84.36.030.

(l) "~~Physical fitness services~~" include, but are not limited to: All exercise classes, whether aerobic, dance, water, jazzercise, etc., providing running tracks, weight lifting, weight training, use of exercise equipment, such as treadmills, bicycles, stair masters and rowing machines, and providing personal trainers (i.e., a person who assesses an individual's workout needs and tailors a physical fitness workout program to meet those individual needs). "~~Physical fitness services~~" do not include instructional lessons such as those for self-defense, martial arts, yoga, and stress management. Nor do these services include instructional lessons for activities such as tennis, golf, swimming, etc. "~~Instructional lessons~~" can be distinguished from

"exercise classes" in that instruction in the activity is the primary focus in the former and exercise is the primary focus in the latter.

(m) "Sale at retail" or "retail sale" include the sale or charge made by persons engaged in providing "amusement and recreation services" and "physical fitness services" as those terms are defined in (b) and (1) of this subsection. The term "sale at retail" or "retail sale" does not include: The sale of or charge made for providing facilities where a person is merely a spectator, such as movies, concerts, sporting events, and the like; the sale of or charge made for instructional lessons, or league fees and/or entry fees; charges made for carnival rides where the customer purchases tickets at a central ticket distribution point and then the customer is subsequently able to use the purchased tickets to gain admission to an assortment of rides or attractions; or, the charge made for entry to an amusement park or theme park where the predominant activities in the area are similar to those found at carnivals.

(n) "Significant amount" relates to the quantity or degree of goods or services rendered and made available to members by the organization. "Significant" is defined as having great value or the state of being important.

(o) "Value of such goods or services" means the market value of similar goods or services or computed value based on costs of production.

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

(a) **Retailing classification.** Gross receipts from the kind of amusement, recreation, and physical fitness services defined to be retail sales in subsection (2)(m) of this section are taxable under the retailing classification. Persons engaged in providing these activities are also taxable under the retailing classification upon gross receipts from sales of meals, drinks, articles of clothing, or other property sold by them.

(b) **Service and other activities classification.** Gross receipts from activities not defined to be retail sales, such as tennis lessons, golf lessons, and other types of instructional lessons, are taxable under the service and other activities classification. Persons providing licenses to use real estate, such as separately itemized billings for locker rentals, are also taxable under this classification. See WAC 458-20-118 (Sale or rental of real estate, license to use real estate).

**(4) Receiving income in the form of dues and/or initiation fees.**

(a) **General principles.** For the purposes of the business and occupation tax, all amounts derived from initiation fees and dues must be reported as gross income which then must be apportioned between taxable and deductible income. The following general principles apply to providing amusement, recreation, and physical fitness services when income is received in the form of dues and/or initiation fees:

(i) RCW 82.04.4282 provides for a business and occupation tax deduction for amounts derived from activities and charges of essentially a nonbusiness nature. The scope of this statutory deduction is limited to situations where no business or proprietary activity (including the rendering of goods or services) is engaged in which directly generates the income claimed for deduction. Many for profit or nonprofit entities may receive "amounts derived," as defined in this section, which consist of a mixture of tax deductible amounts (bona fide initiation fees and dues) and taxable amounts (payment for significant goods and services rendered). To distinguish between these kinds of income, the law requires that tax exemption provisions be strictly construed

against the person claiming exemption. Also, RCW 82.32.070 requires the maintenance of suitable records as may be necessary to determine the amount of any tax due. The result of these statutory requirements is that all persons must keep adequate records sufficient to establish their entitlement to any claimed tax exemption or deduction.

(ii) The law does not contemplate that the deduction provided for by RCW 82.04.4282 should be granted merely because the payments required to be made by members or customers are designated as "initiation fees" or "dues." The statutory deduction is not available for outright sales of tangible personal property or for providing facilities or services for a specific charge. Neither is it available if dues are in exchange for any significant amounts of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered. Thus, it is only those initiation fees and dues which are paid solely and exclusively for the express privilege of belonging as a member of a club, organization, or society, which are deductible.

(iii) In applying RCW 82.04.4282, no distinction is made between the kinds of clubs, organizations, associations, or other entities which may be eligible for this deduction. They may be operated for profit or nonprofit. They may be owned by the members, incorporated, or operating as a partnership, limited liability company, joint venture, sole proprietorship, or cooperative group. They may be of a charitable, fraternal, social, political, benevolent, commercial, or other nature. The availability of the deduction is determined solely by the nature of the activity or charge which generates the "amounts derived" as that term is defined in subsection (2)(a) of this section.

(iv) Nonprofit youth organizations, as defined in subsection (2)(k) of this section, may deduct fees or dues received from members even though the members are entitled to use the organization's facilities, including camping and recreational facilities, in return for such payments. (See RCW 82.04.4271.)

(b) **Allocation of income.** Persons who derive income from initiation fees and dues may find that they have incurred business and occupation tax liability under both the retailing and service and other activities classifications. For example, an organization may furnish exercise equipment as well as provide lessons in martial arts to its members in return for payment of dues. The former is a retailing taxable activity while the latter is taxable under the service business tax. These taxes are at different rates. Once the income has been allocated between taxable and deductible amounts, the parts of taxable income attributable to either retailing activities or service activities must be reported on the combined excise tax return under the appropriate classification and under the prevailing tax rates. In addition, state and local retail sales taxes measured by the retailing portions must be separately collected from dues paying members, reported, and remitted with the same excise tax return.

(c) **Alternative methods of reporting.** Persons who receive any "amounts derived" from initiations fees and/or dues may report their tax liabilities and determine the amount of tax reportable under different classifications (retailing or service) by use of two alternative allocation methods. The taxpayer may only change its selected allocation method annually and all changes are prospective only. These mutually exclusive methods are:

(i) **Actual records of facilities usage.**



(A) ~~Persons may allocate their income based upon such actual records of facilities usage as are maintained. This method is accomplished by either: The allocation of a reasonable charge for the specific goods or services rendered; or, the average comparable charges for such goods or services made by other comparable businesses. In no case shall any charges under either method be calculated to be less than the actual cost of providing the respective good or service. When using the average comparable charges method the term "comparable businesses" shall not include subsidized public facilities when used by a private facility.~~

(B) ~~The actual records of facilities usage method must reflect the nature of the goods or services and the frequency of use by the membership, either from an actual tally of times used or a periodic study of the average membership use of facilities. Actual usage reporting may also be based upon a graduated or sliding fees and dues structure. For example, an organization may charge different initiation fees or dues rates for a social membership than for a playing membership. The difference between such rates is attributable to the value of the goods or services rendered. It constitutes the taxable portion of the "amounts derived" allocable to that particular activity. Because of the broad diversification of methods by which "amounts derived" may be assessed or charged to members, the actual records of usage method of reporting may vary from organization to organization.~~

(C) ~~Organizations which provide more than one kind of "goods or services" as defined in subsection (2)(g) of this section, may provide such actual records for each separate kind of goods or services rendered. Based upon this method, the total of apportioned "taxable" income may be subtracted from total gross income to derive the amount of gross income which is entitled to deduction as "bona fide initiation fees and dues" under RCW 82.04.4282; or~~

~~(ii) **Cost of production method.**~~

(A) ~~The cost of production allocation method is based upon the cost of production of goods or services rendered. Persons using this method are advised to seek the department's review of the cost accounting methods applied, in order to avoid possible tax deficiency assessment if records are audited. In such cases, the cost of production shall include all items of expense attributable to the particular facility (goods or services) made available to members, including direct and indirect overhead costs.~~

(B) ~~No portion of assets which have been fully depreciated will be included in computing overhead costs, nor will there be included any costs attributable to membership recruitment and advertising, or providing members with the indicia of membership (membership cards, certificates, contracts of rights, etc.).~~

(C) ~~The cost of production method is performed by multiplying gross income (all "amounts derived") by a fraction, the numerator of which is the direct and indirect costs associated with providing any specific goods or service, and the denominator of which is the organization's total operating costs. The result is the portion of "amounts derived" that is allocable to the taxable facility (goods or services rendered). If more than one kind of facility (goods or services) is made available to members, this formula must be applied for each facility in order to determine the total of taxable and deductible amounts and to determine the amount of taxable income to report as either retailing taxable or service taxable. The balance of gross amounts derived is deductible as bona fide initiation fees or dues.~~

~~(D) Under very unique circumstances and only upon advance written request and approval, the department will consider variations of the foregoing accounting methods as well as unique factors.~~

~~(E) Unless income accounting and reporting are accomplished by one or a combination of methods outlined in this section, or under a unique reporting method authorized in advance by the department, it will be presumed that all "amounts derived" by any person who provides "goods or services" as defined herein, constitute taxable, nondeductible amounts.~~

~~(5) **Retail sales tax.**~~

~~(a) The retail sales tax must be collected upon charges for admissions, the use of facilities, equipment, and exercise classes by all persons engaged in the amusement, recreation, and physical fitness services that are defined to be retail sales in subsection (2)(m) of this section. The retail sales tax must also be collected upon sales of food, drinks and other merchandise by persons engaging in such businesses. See WAC 458-20-244 (Food products). In the case of persons who receive their income in the form of dues and/or initiation fees, the amount of gross receipts determined to be taxable under the retailing business and occupation classification shall be used to determine the person's retail sales tax liability under this subsection.~~

~~(b) When the charge for merchandise is included within a charge for admission which is not a "sale at retail" as defined herein, the retail sales tax applies to the charge made for both merchandise and admission, unless a proper segregation of such charge is made in the billing to the customer and upon the books of account of the seller.~~

~~(c) The retail sales tax applies upon the purchase or rental of all equipment and supplies by persons providing amusement, recreation, and physical fitness services, other than merchandise that is actually resold by them. For example, the retail sales tax applies to purchases of such things as soap or shampoo provided at no additional charge to members of a health club.~~

~~(6) **Transitory provisions for nonprofit youth organizations.** The 1993 amendment of RCW 82.04.050 resulted in "physical fitness services" provided by nonprofit youth organizations being classified as retail sales. However, section 1, chapter 85, Laws of 1994, amended RCW 82.08.0291 and thereby exempted from the definition of retail sale, the sale of such services by a nonprofit youth organization to members of the organization. This change became effective July 1, 1994. Therefore, nonprofit youth organizations are only liable for retail sales tax on the sale or charge made for "physical fitness services" from July 1, 1993, to June 30, 1994. Nonprofit youth organizations were previously exempt from the collection of retail sales tax on "amusement and recreation services" (RCW 82.08.0291) and were previously not subject to retailing business and occupation tax on both the provision of "physical fitness services" and "amusement and recreation services" (RCW 82.04.4271). Nonprofit youth organizations, however, may have tax liabilities for other types of activities, such as retail sales of food, retail sales of tangible personal property, or the license to use real estate, as discussed above.)~~ (1) **Introduction.** This rule explains the tax reporting instructions for persons who provide the services and activities described in RCW 82.04.050(15). This rule refers to these services and activities as "recreational services and activities." This rule does not address charges for:



(a) Operating an "athletic or fitness facility" (refer to RCW 82.04.050(3) for information about the taxability of operating an athletic or fitness facility); or

(b) Day camps offered by a nonprofit organization or a state or local government entity that provides youth not older than age eighteen, or that are focused on providing individuals with disabilities or mental illness, the opportunity to participate in a variety of supervised activities.

(2) **Other rules that may apply.** Readers may want to refer to other rules for additional information, including:

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

(b) WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, hostels, trailer camps, and similar lodging businesses.

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

(d) WAC 458-20-187 Tax responsibility of vending machine owners and operators.

(e) WAC 458-20-189 Sales to and by the state of Washington and municipal corporations including, counties, cities, towns, school districts, and fire districts.

(f) WAC 458-20-211 Leases or rentals of tangible personal property, bailments.

(g) WAC 458-20-244 Food and food ingredients.

(3) **Examples.** This rule includes examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(4) **Taxability of recreational services and activities.**

(a) Charges, however labeled, to consumers for engaging or participating in the recreational services and activities listed in subsection (6) of this rule are retail sales subject to retailing business and occupation (B&O) tax and retail sales tax. Unless otherwise specified in this rule or in RCW 82.04.050, charges to engage or participate in a recreational service or activity include the furnishing of any related equipment and charges for instructional lessons in the service or activity.

(b) When there is a sale of two or more distinct and identifiable products that includes a charge for a product subject to retail sales tax and a charge for a product not subject to retail sales tax, then retail sales tax applies to the entire selling price, unless prices are separately identified by product on binding sales or other supporting sale-related documentation made available to the customer. For additional information about bundled transactions, see RCW 82.08.190 and 82.08.195.

(c) Separate charges for the sale or rental of tangible personal property, including equipment, gear, and supplies used to engage or participate in recreational services and activities are subject to retailing B&O and retail sales tax. Refer to WAC 458-20-211 for more information about these charges.

(d) A person who provides recreational services and activities must pay retail sales or use tax on the purchase or rental of tangible personal property the person uses as a consumer to provide such services and activities, including equipment and supplies. Retail sales or use tax need not be paid if a person purchases tangible personal property for resale without intervening use. For additional information on sales for resale, refer to WAC 458-20-102 Reseller permits.

**(5) Exclusions and exemptions.**

(a) Educational institutions. Charges made by an educational institution, as defined in RCW 82.04.170, to its students and staff for recreational services and activities listed in subsection (6) of this rule, are not retail sales and therefore are not subject to retailing B&O and retail sales tax. However, charges made by an educational institution to its alumni or to other members of the public for these same services and activities are retail sales subject to retailing B&O and retail sales tax.

(b) Nonprofit youth organizations. RCW 82.08.0291 exempts the sale of recreational services and activities by a nonprofit youth organization to its members from retail sales tax, but does not exempt the sale of these services and activities from retailing B&O tax. For purposes of this rule, a nonprofit youth organization is a nonprofit organization engaged in character building of youth that qualifies for an exemption from property tax under RCW 84.36.030(3).

(c) Fairs, carnivals, and festivals. Charges for admission to, and rides or attractions at, fairs, carnivals, and festivals are not retail sales and therefore not subject to retailing B&O and retail sales tax. For purposes of this rule, fairs, carnivals, and festivals are events that do not exceed twenty-one consecutive days and a majority of the amusement rides, if any, are not affixed to real property.

(d) Diver training. Charges made by a vocational school for commercial diver training that is licensed by the workforce training and education coordinating board under chapter 28C.10 RCW, are not retail sales and therefore not subject to retailing B&O and retail sales tax.

**(6) Retail recreational services and activities.** Gross income received from providing the following exclusive list of recreational services and activities is subject to retailing B&O tax and retail sales tax:

(a) Air sports. Charges for ballooning, hang gliding, indoor or outdoor sky diving, paragliding, parasailing, and similar activities.

(b) Amusement park, theme park, and water park facilities. Charges for admission to an amusement park, theme park, or water park, and locker or cabana rentals at such facilities. For purposes of this rule, an amusement park or theme park is a location that provides permanently affixed amusement rides, games, and other entertainment, but does not include parks or zoos where the primary purpose is the exhibition of wildlife, or fairs, carnivals, and festivals as described in subsection (5)(c) of this rule. Separate charges for rides, attractions, or other entertainment that are in addition to the admission charge are not retail sales under this subsection.

**Example 1.** Adventure Land is an amusement park that has an admission charge of ten dollars per person per day. The admission charge grants guest access to most of the park's rides and attractions. In addition, Adventure Land has a wooden roller coaster that guests must pay a separate charge of two dollars per person to ride. The charge for admission is subject to retailing B&O tax and retail sales tax. The charge for the wooden roller coaster is subject to service and other activities B&O tax.

(c) Bowling. Charges for:

(i) Bowling;

(ii) Rental of bowling shoes;

(iii) Bowling lessons; and

(iv) The opportunity to participate in competitive bowling events or tournaments when a participant pays a fee to the bowling facility operator. This includes amounts paid by event organizers to the bowl-

ing facility operator if the amounts vary based on the number of participants.

**Example 2.** A high school is sponsoring and organizing a bowling tournament that will be held at Bowling Alley Z to raise money for new band uniforms. To enter the tournament, participants pay a fee of twenty dollars per person to the local high school. The local high school contracts with Bowling Alley Z to use its facilities for five hundred dollars regardless of the number of participants. The fee does not vary based on the number of participants. On the day of the tournament, the high school submits full payment to Bowling Alley Z. If participants need to rent bowling shoes, they pay Bowling Alley Z directly on the day of the tournament. The amount the high school pays to Bowling Alley Z is subject to service and other activities B&O tax because the high school is paying Bowling Alley Z on behalf of the participants and the fee is not based on the number of participants. Any fee to rent bowling shoes is subject to retailing B&O tax and retail sales tax.

(d) **Climbing activities.** Charges for climbing on artificial climbing structures, whether indoors or outdoors.

(e) **Day trips for sightseeing purposes.** Charges for sightseeing trips, whether for educational, instructional, or recreational purposes, that last less than twenty-four hours. Examples of day trips for sightseeing purposes include wine tours, scenic tours, culinary tours, educational or nature-related tours, or cultural tours. For information on multiday sightseeing tours, refer to WAC 458-20-258 Travel agents and tour operators.

(f) **Fishing.** Charges to fish, access to private fishing areas, and charges for chartered or guided fishing tours.

(g) **Golf.** Charges for golfing activities where golf balls or golf clubs are used including charges for:

(i) Playing golf or miniature golf;

(ii) Golfing lessons, if the charge for the lesson is not stated separately from other golf facility charges;

(iii) Hitting golf balls at a driving range;

(iv) Using a golf simulator;

(v) Renting a golf cart;

(vi) Players to use their own golf cart; and

(vii) Players to participate in competitive golf events or tournaments where the participant pays a fee to the golf facility operator. This includes amounts paid by event organizers to the golf facility operator if the amounts vary based on the number of participants.

**Example 3.** A charity is sponsoring and organizing a golf tournament to raise funds to renovate a neighborhood playground. To participate, players must pay fifty dollars per person to the golf course facility on the day of the tournament. This charge does not include the rental of a golf cart, which some participants elect to rent for twenty dollars per golf cart. The amounts paid to the golf course facility by the participants are subject to retailing B&O tax and retail sales tax. Amounts paid to rent a golf cart are also subject to retailing B&O and retail sales tax.

**Example 4.** A local golf course offers footgolf, a sport that combines components of soccer and golf using a soccer ball, every Tuesday and charges ten dollars per person to play one round. Amounts paid by participants to play footgolf are subject to the service and other activities B&O tax because footgolf is not considered a golfing activi-

ty, as described in (g) of this subsection, in which golf balls or golf clubs are used.

(h) **Horseback riding.** Charges for individual or group rides, guided or unguided, offered to the public if the seller furnishes the horse to the rider and the primary focus of the ride is not instructional.

(i) **Hunting.** Charges for guided hunting and hunting at game farms and shooting preserves.

(j) **Motorized activities.** Charges for go-karting, bumper cars, snowmobiles, all-terrain vehicles, and other motorized activities where the seller provides both the vehicle and the premises where the buyer will operate the vehicle. If the seller provides the vehicle, but not the premises to operate the vehicle, then the charge is considered a rental of tangible personal property and is subject to retailing B&O and retail sales tax.

**Example 5.** For an hourly fee, City D racetrack provides customers the opportunity to use its racetrack to ride all-terrain vehicles and dirt bikes. Customers are required to provide their own all-terrain vehicles and dirt bikes to ride on the racetrack. Because City D only provides the premises on which customers ride their vehicles and bikes, the hourly fee to use the racetrack is subject to service and other activities B&O tax.

(k) **Playground activities.** Charges for indoor or outdoor playground activities such as: Inflatable bounce structures and other inflatables, mazes, trampolines, slides, ball pits, games of tag, including laser tag and soft-dart tag, and human gyroscope rides, regardless of whether the activities occur at the seller's place of business.

**Example 6.** Kidz Learning for Life is an enrichment and physical development center for children under eight years old. The center offers physical coordination classes for infants and toddlers, and dance, music, and art classes for older children. The center also provides an outdoor trampoline for children ages four to eight years old. Parents are required to stay at the center during classes, and depending on the class, may be required to participate with their child. Parents can either pay a monthly membership charge that allows for unlimited classes or may pay on a per class basis. Both charges are subject to the service and other activities B&O tax because the types of classes offered by Kidz Learning for Life are not considered playground activities for the purposes of (k) of this subsection.

**Example 7.** Fun Zone Extreme is an indoor playground facility that offers multiple unstructured play activities for children seventeen and under. Some of the activities include laser tag, inflatable bounce structures, ball pits, and climbing structures, such as a rock wall. To participate in all of the activities Fun Zone Extreme offers, customers pay an admission fee based on their age and the fee allows the participant unlimited use of the facility for the entire day. The admission fee charged to customers is subject to retailing B&O and retail sales tax because the activities at Fun Zone Extreme are considered playground activities for the purposes of (k) of this subsection.

**Example 8.** Each autumn, a local farmer opens his property to the public to use for various family-related activities. The property is open to visitors, free of charge, from September 15th through October 31st. Activities available on the property include a corn maze, inflatable bounce structures for children, and a petting zoo. Although general admission is free, the owner charges a fee of five dollars per

person to go through the corn maze. The fee charged to customers to use the corn maze is subject to retailing B&O and retail sales tax.

(l) **Shooting sports and activities.** Charges to the public to engage in shooting sports and activities, such as target shooting, skeet, sporting clays, "5" stand, and archery.

(m) **Skating.** Charges to the public to participate in skating, including ice skating, roller skating, and inline skating.

(n) **Snow sports and activities (nonmotorized).** Charges to the public for the use of land or facilities to engage in the following nonmotorized snow sports and activities: Downhill and cross-country skiing, snowboarding, ski jumping, sledding, snow tubing, snowshoeing, and similar snow sports and activities. This includes charges for the use of ski lifts and tows for snow sports and activities and daily or season passes for access to trails or other areas where nonmotorized snow sports and activities are conducted.

The snow sports and activities listed in (n) of this subsection may occur at an outdoor facility in natural or artificial snow, or at an indoor facility with no snow or artificial snow.

**Example 9.** During the summer months, Flurry Mountain ski lodge allows the public access to its land for hiking. Flurry Mountain charges a daily fee to hike on the land and a fee to use the ski lift to obtain access to elevated hiking areas. Because the fees for hiking and using the ski lift are not considered snow sports and activities, both fees are subject to service and other activities B&O tax.

(o) **Swimming.** Charges for recreational or fitness swimming that is open to the public, such as open swim, lap swim, and special events like kids night out and pool parties during open swim time, and pool parties for private events, such as birthdays, family gatherings, and employee outings. Charges for swimming lessons or participating in swim meets or swim competitions are not retail sales unless provided by an athletic or fitness facility as defined in RCW 82.04.050.

**Example 10.** Swim Center, Inc. is an aquatics center that provides swimming lessons and water fitness classes. All swimming lessons and water fitness classes are subject to separate monthly fees. Swim Center, Inc. is not considered an "athletic or fitness facility" as that term is defined in RCW 82.04.050. Accordingly, charges for swimming lessons are subject to service and other activities B&O tax. However, fees charged for water fitness classes are subject to retailing B&O and retail sales tax.

(p) **Table games.** Charges to play air hockey, billiards, pool, foosball, shuffleboard, ping-pong, and similar games.

(q) **Water sports and activities.** Charges for scuba diving, snorkeling, river rafting, surfing, kiteboarding, flyboarding, water slides, water trampolines, water pillows, water rollers, and similar water sports and activities such as canoeing and kayaking.

**Example 11.** Main Street Marina charges separately for kayak and canoe rentals and private lessons on how to operate the watercraft. The charge to rent a kayak or canoe is considered the rental of tangible personal property and is subject to retailing B&O and retail sales tax. Charges for kayaking and canoeing lessons are also subject to retailing B&O and retail sales tax.

(r) **Miscellaneous recreational services and activities.** Charges for bungee jumping, zip lining, activities involving riding inside a ball, such as zorbing or water walking, paintball activities, airsoft activities, batting cage activities, and darts, both electronic and nonelectronic.