



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (October 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: January 10, 2018

TIME: 2:12 PM

WSR 18-03-060

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: WAC 458-20-218 (Rule 218) titled Advertising agencies, explains how Washington’s business and occupation tax, retail sales tax, and use tax is applied to advertising agencies and the services these agencies provide. The Department is updating Rule 218 to:

- Provide definitions for the terms “advertising agency” and “advertising services;”
- Include examples that clarify the tax reporting classifications for various advertising activities; and
- Clarify when an advertising agency may exclude certain amounts it receives as advances and/or reimbursements from its client when acting as an agent for its client.

Citation of rules affected by this order:

New:
 Repealed:
 Amended: WAC 458-20-218 Advertising agencies
 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 17-23-128 on November 17, 2017 (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: No preliminary cost-benefit analysis was prepared.

**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Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___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New	___	Amended	___	Repealed	___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	___	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: January 10, 2018

Name: Erin T. Lopez

Title: Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 10-06-070, filed 2/25/10, effective 3/28/10)

WAC 458-20-218 Advertising agencies. ((Advertising agencies are primarily engaged in the business of rendering professional services, but may also make sales of tangible personal property to their clients or others or make purchases of such articles as agents in behalf of their clients. Articles acquired or produced by advertising agencies may be for their own use in connection with the rendition of an advertising service or may be for resale as tangible personal property to their clients.

Business and Occupation (B&O) Tax

The gross income received for advertising services, including commissions or discounts received upon articles purchased as agents in behalf of clients, is taxable under the service and other business activities B&O tax classification. (See WAC 458-20-144 for discounts or commissions allowed by printers.) Included in this classification are amounts attributable to sales of tangible personal property, unless charges for such articles are separately stated in billings rendered to clients.

The retailing or wholesaling classification B&O tax applies to articles of tangible personal property sold to persons for whom no advertising service is rendered and also to charges to clients for such articles if separately stated from charges for advertising services in billings rendered.

The manufacturing classification applies to articles manufactured for sale or commercial or industrial use (see WAC 458-20-134), and also to interstate sales of manufactured articles separately stated from advertising services. (General principles covering sales or services to persons in other states are contained in WAC 458-20-193.)

Retail Sales Tax

The retail sales tax applies upon all sales of plates, engravings, electrotypes, etchings, mats, and other articles to advertising agencies for use by them in rendering an advertising service and not resold to clients.

The retail sales tax must be paid by advertising agencies to vendors upon retail purchases made by them as agent in behalf of clients.

Advertising agencies are required to collect the retail sales tax upon charges taxable under the retailing B&O tax classification. Advertising agencies must provide a resale certificate for purchases made before January 1, 2010, or a reseller permit for purchases made on or after January 1, 2010, to the vendor to document the wholesale nature of any 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 vendor for five years from the date of last use or December 31, 2014.

Use Tax

The use tax applies upon the use of articles purchased or manufactured for use in rendering an advertising service. Articles acquired without payment of retail sales tax which are resold to clients, but not separately stated from charges for advertising service, are also subject to use tax.)) (1) **Introduction.** This rule explains

how Washington's business and occupation (B&O) tax, retail sales tax, and use tax is applied to advertising agencies under various scenarios.

(a) **References to related rules.** The department of revenue (department) has adopted other rules to which readers may want to refer:

(i) WAC 458-20-102 Reseller permits;
(ii) WAC 458-20-111 Advances and reimbursements;
(iii) WAC 458-20-134 Commercial or industrial use;
(iv) WAC 458-20-136 Manufacturing, processing for hire, fabricating;

(v) WAC 458-20-141 Duplicating activities and mailing bureaus;
(vi) WAC 458-20-144 Printing industry;
(vii) WAC 458-20-193 Interstate sales of tangible personal property;

(viii) WAC 458-20-15503 Digital products; and
(ix) WAC 458-20-19301 Multiple activities tax credits.

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

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

(a) "Advertising agency" means a business primarily engaged in providing advertising services and may be involved in other related activities such as the buying, selling, or producing of tangible personal property for or on behalf of clients, or for the agency to use in connection with providing advertising services.

(b) "Advertising services" means all services directly related to the creation, preparation, production, or the dissemination of advertisements. Advertising services include layout, art direction, graphic design, mechanical preparation, production supervision, placement, and rendering advice to a client concerning the best methods of advertising that client's products or services. Advertising services also include providing online referrals, search engine marketing and lead generation optimization, web campaign planning, the acquisition of advertising space in various media outlets such as the internet, television, radio, newspaper, and magazines, and the monitoring and evaluation of the effectiveness of an advertising campaign.

(3) **Business and occupation tax.** Generally, advertising agencies are subject to business and occupation (B&O) tax on all gross income and commissions, including amounts received to pay media outlets, unless the amounts are valid advances and reimbursements under WAC 458-20-111.

(a) **Service and other activities.** Gross income received by advertising agencies is subject to service and other activities B&O tax on the following nonexclusive list of advertising services:

(i) Procuring advertising space or time in a media outlet for a client. A media outlet includes, but is not limited to, television and radio stations, newspapers, magazines, and web sites.

(ii) Consultation, creating advertising campaigns, and graphic design services.

(iii) Copy writing, editing, layout, and coordinating of advertising material.

(iv) Receiving commissions for purchasing articles as agents on behalf of clients.

(v) Sales of advertising products that are incidental to the advertising services rendered, unless the charges are separately itemized when invoiced to the client. Refer to (b) of this subsection for the taxability of such charges that are separately itemized.

(b) **Retailing and wholesaling activities.** Advertising agencies that sell tangible personal property or provide retail services to the end user are subject to retailing B&O tax on their gross proceeds of sale. In addition, sales of advertising products that are incidental to the advertising services rendered, but that are separately itemized when invoiced to the client, are also subject to retailing B&O tax. With regard to advertising agencies engaged in wholesaling activities, sales for resale are subject to wholesaling B&O tax if the advertising agency obtains a reseller permit from the buyer as provided by WAC 458-20-102.

Example 1. Advertising Agency provides various advertising services to its client, Sports Co., including the design of advertising campaigns and sales of brochures it purchases from a third-party printing company. It charges \$100,000 for its design of advertising campaigns plus \$10,000 for its sales of brochures to Sports Co. The price of the brochures is separately stated from the other services provided on Sports Co.'s invoice. Because the price of the brochures is separately stated, the \$10,000 that Advertising Agency receives from its sale of brochures to Sports Co. is not subject to the service and other activities B&O tax classification. Instead, these sales are subject to retailing B&O and retail sales tax. The \$100,000 Advertising Agency receives for its design of advertising campaigns is subject to service and other activities B&O tax. Had Advertising Agency not separately stated the \$10,000 from its sale of brochures on the invoice to Sports Co., then the total amount received for the design of advertising campaigns and the sale of brochures would be subject to service and other activities B&O tax if the sale of the brochures are incidental to the advertising services provided.

(c) **Manufacturing activities.** Advertising agencies that manufacture articles of tangible personal property that are sold or used for commercial or industrial use are subject to the manufacturing B&O tax classification on the value of these articles. For additional information on manufacturing, see WAC 458-20-134 and 458-20-136.

(d) **Multiple activities tax credit (MATC).** An advertising agency that sells the product it manufactures must report under each of the appropriate "production" (manufacturing) and "selling" (retailing or wholesaling) classifications of the B&O tax. The advertising agency may then claim a MATC for the lesser of either the manufacturing B&O tax, or the wholesaling and/or retailing B&O tax liability. For additional information on the MATC, see WAC 458-20-19301.

Example 2. Advertising Agency provides various advertising services to its Washington-based client, News Station. It provides News Station with new marketing strategies and sells billboards it manufactures. On the invoice, Advertising Agency separately itemizes its sales of billboards to News Station and the marketing strategy services. Advertising Agency is subject to service and other activities B&O tax on amounts it receives from marketing strategy services, manufacturing B&O tax on its manufacturing of billboards, and retailing B&O tax on its sale of billboards. Advertising Agency must also collect and remit retail sales tax on the sale of billboards. Advertising Agency may claim the MATC for the lesser of either its retailing B&O tax or manufacturing B&O tax liability.

(e) Requirements for excluding amounts received when acting as an agent for a client. Under WAC 458-20-111, there is an exclusion from B&O tax for advances or reimbursements an advertising agency receives when the funds are used to pay costs or fees for a client if certain conditions are met. An advertising agency must meet all three of the following requirements to exclude advances and reimbursements from its gross income:

(i) The amounts are reimbursements or advances made to pay obligations of a client;

(ii) The advertising agency is not performing these services, either directly or indirectly, through independent contractors; and

(iii) The advertising agency has no liability to pay the client's obligations, except as the agent of its clients.

Example 3. Advertising Agency arranges advertising for its client, Sports Co., through radio and television broadcasting companies. For a total contract amount of \$8,000, it provides marketing and branding strategies, sales promotions, and is obligated to purchase airtime from media outlets on behalf of Sports Co. for television and radio commercials. Advertising Agency pays the media outlets \$3,000 to air the commercials and is responsible for the quality of the commercials to Sports Co., which includes the commercials' video and audio quality. In addition, Advertising Agency is liable to the media outlet for payment.

Advertising Agency may not deduct the \$3,000 payment to the media outlets as an advance or reimbursement under WAC 458-20-111 for the following reasons:

- It is discharging its own obligations to secure airtime to fulfill its advertising services;

- It is liable to Sports Co. for the quality of the services; and

- It is liable to the media outlets for payment.

Advertising Agency failed to meet each of the three requirements under WAC 458-20-111 as described in (e) of this subsection. Thus, the entire amount of \$8,000 is subject to service and other activities B&O tax.

Example 4. Same facts as Example 3, except now Advertising Agency is only acting as an agent on behalf of Sports Co. to secure airtime for a total contract amount of \$4,000. Sports Co. is directing and controlling Advertising Agency's activities as well as the selection of the media. In addition, Advertising Agency is not obligated to pay the media outlet and is not responsible for the quality of the services. Because Advertising Agency has satisfied the required three elements as described in (e) of this subsection, it may deduct the \$3,000 payment it makes to the media outlet as an advance and reimbursement under WAC 458-20-111. Thus, only the \$1,000 is subject to service and other activities B&O tax.

(4) Retail sales tax. Retail sales tax applies to all retail sales including, but not limited to, the following:

(a) Sales made to an advertising agency. An advertising agency is subject to retail sales tax on all purchases of items used or consumed in providing advertising services and not resold to clients. Items purchased for resale to the client are not subject to retail sales tax if the advertising agency provides the seller with a reseller permit as provided by WAC 458-20-102.

(b) Sales made to clients. Advertising agencies are required to collect retail sales tax from its clients on retail sales made and retail services provided under subsection (3)(b) of this rule.

(c) **Purchases as an agent.** Retail sales tax must be paid by advertising agencies to vendors on retail purchases made by them acting as an agent on behalf of clients.

(5) **Use tax.** Use tax applies on the use of items purchased or manufactured to be used by an advertising agency in rendering an advertising service if retail sales tax has not been paid. Items acquired without payment of retail sales tax and that are resold to clients, but not separately stated from charges for advertising service, are also subject to use tax.