



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)
(Implements RCW 34.05.310)
Do NOT use for expedited rule making

Agency: Department of Revenue

Subject of possible rule making: WAC 458-20-258, titled: *Travel agents and tour operators* (Rule 258) describes the business and occupation (B&O), retail sales, and use tax responsibilities of persons providing travel agent and/or tour operator services. A travel business may include both travel agent and tour operator activities.

Statutes authorizing the agency to adopt rules on this subject: RCW 82.32.300, 82.01.060(2), 82.04.260, 82.08.020, and 82.12.020.

Reasons why rules on this subject may be needed and what they might accomplish: Rule 258 is being amended to update the rule to reflect the identical tax rates for B&O tax applied to Travel Agents and Tour Operators and to provide clarifying examples for the taxation of income and sale or use of tangible personal property. Also adds clarifying language throughout the rule.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: None.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Parties interested in this rule making may contact the individual listed below. The public may also participate by providing written comments throughout this rule making or giving oral testimony at the public meeting or public hearing.

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:

A preliminary draft of possible rule changes is available via the Department's online [Rules Agenda](#).

Written comments may be submitted by mail and should be directed to Mark Bohe at either of the following addresses: email: MarkBohe@dor.wa.gov, or mailing address: Mark Bohe, ITA Division, PO Box 47453, Olympia, WA 98504-7453.

Written and oral comments will be accepted at the public meeting.

Public meeting location:

Capitol Plaza Building
Fourth Floor Executive Conference Room
1025 Union Avenue SE
Olympia, Washington

Assistance for persons with disabilities:

Contact Mary Carol LaPalm (360) 725-7499 or Renee Cosare (360) 725-7514 no later than 10 days before the meeting date. For Hearing Impaired please contact us via the Washington Relay Operator at (800) 833-6384.

Call in option can be provided upon request no later than 3 days before the meeting date.

Date: March 18, 2015; **Time:** 10:00 AM.

Date January 30, 2015

Name

Dylan Waits

Signature

Title

Rules Coordinator

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STATE OF WASHINGTON
FILED

DATE: January 30, 2015
TIME: 9:59 AM

WSR 15-04-066

AMENDATORY SECTION (Amending WSR 90-17-003, filed 8/2/90, effective 9/2/90)

WAC 458-20-258 Travel agents and tour operators. (1) Introduction. ~~This ((section describes the business and occupation (B&O) taxation of travel agents and tour operators. Travel agents are taxed at the special travel agent rate under RCW 82.04.260(10). Tour operators are generally taxed under the service or other business classification under RCW 82.04.290. However, the business activities of tour operators may sometimes include activities like those of a travel agent. This section recognizes the overlap of activities and taxes them consistently.~~

~~(2) **Definitions:**~~

~~(a) "Commission" means the fee or percentage of the charge or their equivalent, received in the ordinary course of business as compensation for arranging the service. The customer or receiver of the service, not the person receiving the commission, is always responsible for payment of the charge.~~

~~(b) "Pass-through expense" means a charge to a tour operator business where the tour operator is acting as an agent of the customer and the customer, not the tour operator, is liable for the charge. The~~

~~tour operator cannot be primarily or secondarily liable for the charge other than as agent for the customer. See: WAC 458-20-111 Advances and reimbursements.~~

~~(c) "Tour operator business" means a business activity of providing directly or through third party providers, transportation, lodging, meals, and other associated services where the tour operator purchases or itself provides any or all of the services offered, and is itself liable for the services purchased.~~

~~(d) "Travel agent business" means the business activity of arranging transportation, lodging, meals, or other similar services which are purchased by the customer and where the travel agent or agency merely receives a commission for arranging the service.~~

~~(3) **Travel agents.**~~

~~(a) The gross income of a travel agent or a travel agent business is the gross commissions received without any deduction for the cost of materials used, labor costs, interest, discount, delivery cost, taxes, losses, or any other expense. It is taxed at the special travel agent rate.~~

~~(b) Gross receipts, other than commissions, from other business activities of a travel agent, including activities as a tour operator,~~

~~are taxed in the appropriate B&O classification, service, retailing, etc., as the case may be.~~

~~(4) **Tour operators.**~~

~~(a) The gross income of a tour operator or a tour operator business is the gross commissions received when the activity is that of a travel agent business.~~

~~(i) When a tour operator receives commissions from a third party service provider for all or a part of the tour or tour package, the gross income of the business for that travel agent activity is the commissions received.~~

~~(b) However, if the activity is that of a tour operator business, receipts are B&O taxable in the service classification without any deduction for the cost of materials used, labor costs, interest, discount, delivery cost, taxes, losses, or any other expense; **except,** receipts attributable to pass-through expenses are not included as part of the gross income of the business.~~

~~(5) **Examples:**~~

~~(a) A travel agent issues an airplane ticket to a customer. The cost of the ticket is \$250 which is paid by the customer. The travel agent receives \$25 from the airline for providing the service.~~

~~(i) The gross income of the business for the travel agent is the \$25 commission received.~~

~~(ii) The gross income of the business is taxed at the special travel agent rate.~~

~~(b) A tour operator offers a tour costing \$1,500 per person. The tour cost consists of \$800 airfare, \$500 lodging and meals, and \$200 bus transportation. The tour operator has an arrangement with each of the service providers to receive a 10% commission for each service of the tour, which in this case is \$150 ($\$80 + \$50 + \20). The tour operator issues tickets, etc, only when paid by the customer and is not liable for any services reserved but not provided.~~

~~(i) The tour operator is engaged in a travel agent activity and the gross income of the business is commissions received, \$150.~~

~~(ii) The gross income of the business, \$150, is taxed at the special travel agent rate.~~

~~(c) The same facts as in example (b) except that the tour operator has a policy of requiring 10% or \$150 as a down payment with the remaining \$1,350 payable 20 days prior to departure with 95% refundable up to 10 days prior to departure and nothing refunded after 10 days prior to departure. The customer cancels 15 days prior to departure and is refunded \$1,425 with the tour operator retaining \$75.~~

~~(i) The gross income of the tour operator business is the \$75 retained. No amount is attributable to pass-through expense since the tour operator was not obligated to the service provider in the event of cancellation and the tour operator was not acting as the agent of the customer.~~

~~(ii) The gross income of the business, \$75, is taxed in the service B&O tax classification.~~

~~(d) A tour operator offers a package tour for the Superbowl costing \$800 per person. The tour operator purchases noncancellable rooms in a hotel for \$300 per room for 2 nights, and game tickets which cost \$100 each. The package includes airfare which costs \$200 per person for which the tour operator receives the normal commission of \$20. As an extra feature, the tour operator offers to provide, for an extra cost, special event tickets, if available, at his cost of \$50 each. The tour operator is B&O taxable as follows:~~

~~(i) The gross income of the tour operator business is \$600 (\$800 less \$200 airfare). Because the tour operator purchased the rooms and the game tickets in its own name and is liable for the rooms or tickets if not resold, the tour operator is not operating as a travel agent business and is B&O taxable in the service classification. If the tour operator receives a commission on the rooms sold to itself,~~

~~the activity remains taxable as a tour operator business under the service classification and the commission received is treated as a cost discount, not included in the gross income of the business.~~

~~(ii) The \$50 received for the special event ticket is attributable to a pass-through expense and is not included in the gross income of the tour operator business. The special event ticket receipt is attributable to a pass through expense because the tour operator is acting as an agent for the customer.~~

~~(iii) The \$20 received as commission from the sale of the airfare is a travel agent business activity and is included as gross income of a travel agent and taxed at the special travel agent rate)) rule describes the business and occupation (B&O), and retail sales and use tax reporting responsibilities of persons providing travel agent and/or tour operator services. A travel business may include both travel agent and tour operator activities.~~

(a) **Rule 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 department will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority. Examples are numbered consecutively throughout this rule.

(b) **References to related rules.** The department of revenue (de-
partment) has adopted other rules that readers may want to refer to:

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

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

(iii) WAC 458-20-19402 (Single factor receipts apportionment—
Generally).

(2) **Travel agents.**

(a) **Definitions. For purposes of this rule:**

(i) A "travel agent" is a person engaging in the business activi-
ty of arranging transportation, lodging, meals or other similar ser-
vice that is purchased by the customer from the service provider and
where the travel agent merely receives a commission for arranging the
customer's service.

(ii) A "commission" is the fee or percentage of the price charged
by a service provider to a customer that the travel agent receives
from the service provider as compensation for arranging the purchase
of the service by the customer. Commission also includes any addition-
al fee charged by the travel agent to the customer that the travel
agent receives as compensation for arranging the purchase of the ser-
vice by the customer.

(b) **Taxability of income.**

Travel agent services. The gross income for engaging in business as a travel agent is the commissions received, which is subject to the travel agent/tour operator B&O tax classification. The gross amount of the commissions is taxable, without any deduction for the cost of materials used, labor costs, interest, discount, delivery cost, taxes, losses, or any other expense.

Example 1: Travel Agent books an airplane ticket for Jane in Jane's name. The cost of the ticket is \$250, which is paid by Jane. Travel Agent receives \$25 from the airline for providing the service. Travel Agent is at no time personally liable for the ticket price. The \$25 commission received by Travel Agent is subject to the travel agent/tour operator B&O tax.

(c) **Other income.** Income from other business activities is subject to tax under the appropriate B&O classification, such as service and other business activities classification or retailing classification, as the case may be. If the sale is a retail sale, retail sales tax must be collected unless the sale is specifically exempt by law. See subsection (3) of this rule for an explanation of the taxability of tour operator activities and subsection (4) of this rule for an ex-

planation of the taxability of other potential income generating activities.

(d) **Taxability of purchases.** A travel agent is the consumer of tangible personal property or retail services the travel agent purchases and/or uses in providing travel agent services. If the travel agent does not pay retail sales tax to the seller of the property or services, the travel agent must remit retail sales (commonly referred to as "deferred sales tax") or use tax directly to the department.

Example 2: TTT Travel Services has a booking arrangement with its charter air and bus transportation service providers, under which TTT receives from the providers 10% of the selling price of each ticket sold. TTT charges its customers the face value of each ticket sold.

Thus, if TTT:

(i) In its capacity as agent for Susan Smith, arranges the purchase of Susan's air transportation from XY Airlines for \$500, the \$50 TTT receives from XY Airlines is considered commission income subject to the travel agent/tour operator rate.

(ii) Has a policy requiring customers to pay a 10% nonrefundable down payment for a tour, with the remaining balance due 15 days before departure. If a customer fails to pay the remaining balance or cancels the tour, TTT retains the 10% down payment. Any down payment retained

by TTT is included in the gross income of the business and subject to the travel agent/tour operator rate.

Example 3: SSS Travel Services offers a Washington state tour.

The tour package consists of lodging and bus transportation services, which are reserved by SSS but SSS has no liability for any lodging or bus tickets not sold by SSS to customers.

SSS sells a tour package to Jane, and also arranges air transportation to the site where the tour begins. Jane pays \$300 for the airline ticket and SSS receives a \$30 fee (10% of the airfare) from the airline for booking the flight. Further, SSS collects \$600 from Jane for the lodging, only paying \$500 over to the lodging providers and collects \$400 for the bus transportation but only pays over to the transportation providers \$360.

SSS's gross income from travel agent/tour operator activities is \$170, which is taxed at the travel agent/tour operator rate. This total of \$170 income consists of the \$30 commission from the airline, \$100 retained from the sale of the lodging, \$40 retained from the sale of the bus transportation.

(3) Tour operators.

(a) Definitions.

(i) A "tour operator" is a person engaging in the business activity of providing directly or through third-party providers, transportation, lodging, meals and other associated services that are purchased by the customer. The tour operator generally either purchases or provides some or all of the services offered, and is itself liable for the payment of the services purchased.

(ii) A "pass-through expense" is an amount received by a tour operator from a customer where the tour operator is acting as agent of the customer in purchasing services from a service provider. The customer, not the tour operator is liable for payment of the service provider's charge. The tour operator cannot be primarily or secondarily liable for the charge, other than as agent for the customer. (See also WAC 458-20-111 Advances and reimbursements.)

(b) Taxability of income.

Tour operator services. The gross income received for engaging in business as a tour operator is subject to the travel agent/tour operator B&O tax classification. There is no deduction allowed for the cost of materials used, labor costs, discounts, taxes, losses, or any other expense to the tour operator. Amounts received from the customer for pass-through expenses are not included as a part of gross income.

Example 4: TTT Travel Services offers a Washington state tour priced at \$1,500. The tour package consists of air transportation, lodging, and bus transportation. TTT is liable for paying the service providers, even if a customer fails to pay TTT for a reserved tour. The gross income of the business is the total tour sales price received, \$1,500, taxed at the travel agent/tour operator rate.

(c) **Other income.** Income from other business activities is subject to tax under the appropriate B&O classification, such as service and other business activities classification or retailing classification, as the case may be. If the sale is a retail sale, retail sales tax must be collected unless specifically exempt by law. See subsection (2) of this rule for an explanation of the taxability of travel agent activities and subsection (4) of this rule for an explanation of the taxability of other potential income-generating activities.

(d) **Taxability of purchases.** A tour operator is the consumer of tangible personal property or retail services the tour operator purchases and/or uses in a tour operator's business. If the tour operator does not pay retail sales tax to the seller of the property or services, the tour operator must remit retail sales (commonly referred to as "deferred sales tax") or use tax directly to the department.

(4) **Taxability of other income.** A travel agent or tour operator may derive income from business activities other than as a travel agent or tour operator. The gross income from these other business activities is subject to other B&O tax classifications and retail sales tax, as provided by law.

Examples of other income that a travel agent or tour operator may receive include:

(a) **Sales of tangible personal property, such as a gift or merchandise to customers.** Gross proceeds from these sales are subject to retailing B&O tax and the travel agent/tour operator must collect and remit retail sales tax, unless specifically exempt by law.

(b) **Management, financial, and administrative services provided to an affiliated company.** Gross income from these activities is subject to the service and other business activities classification of the B&O tax, even if the affiliated company is engaged in business as a travel agent or tour operator.

(c) **Incentive payments or other referral fees.** Gross income from these activities is subject to the service and other business activities classification of the B&O tax. This includes payments to travel agents from business operating computerized systems, used to store and retrieve information and conduct transactions related to travel.

Example 5: TTT Travel Services (TTT) is hired to book an airline ticket for a customer. After locating an XY Airlines flight the customer wants, TTT purchases the ticket in the name of the customer. XY Airlines agrees that TTT has no liability to pay for the flight and that the customer alone is liable to pay for the flight. The customer agrees that TTT has no liability for providing the purchased service and the customer will not be entitled to a refund from TTT if the flight is canceled. In these circumstances, TTT may exclude the amount for its customer. However, if TTT Travel provided XY Airlines with a guarantee of payment, then TTT would have a secondary liability to pay for the ticket and would not be entitled to exclude the amount from gross income.

TTT must include as gross income all commission income received from XY Airlines, the service provider, for booking the air transportation, whether paid by the customer or the service provider. Any additional fees for other activities are subject to the service and other business activities classification of the B&O tax.

Example 6: TTT Travel Services (TTT) offers a Washington state tour priced at \$1,500. The tour package consists of air transportation, lodging, and bus transportation. TTT is liable for paying the service providers, even if a customer fails to pay TTT for a reserved

tour. The gross income of the business is the total tour sales price received, \$1,500, taxed at the travel agent/tour operator rate.

Example 7: TTT has a policy requiring customers to pay a 10% non-refundable down payment for a tour, with the remaining balance due 15 days before the departure. If a customer fails to pay the remaining balance or cancels the tour, TTT retains the 10% down payment. Any down payment retained by TTT is included in the gross income of the business and subject to the travel agent/tour operator rate.

Example 8: SSS Travel Services (SSS) offers a tour package and also arranges transportation to the site where the tour begins. The tour package includes \$300 airline ticket, \$600 lodging and \$400 bus transportation. SSS secondarily guarantees only the airline payment. SSS's gross income from the air fare is \$300. If SSS purchases the lodging from Great Hotels to sell in its tour packages, it will include in gross income the price of the lodging purchased from Great Hotels that it resells to its tour package customers.

(5) **Apportionment.** Persons engaged in business as a travel agent or tour operator both inside and outside the state may be eligible to apportion gross income reportable under the "travel agent/tour operator" classification. WAC 458-20-19401 and 458-20-19402 provide guid-

ance on apportionment methods that may be appropriate for a travel agent or tour operator that has substantial nexus with other states.

[Statutory Authority: RCW 82.32.300. WSR 90-17-003, § 458-20-258, filed 8/2/90, effective 9/2/90.]

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