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12/31/13

WAC 458-20-168 Hospitals, nursing homes, ~~boarding home~~assisted living facilities, adult family homes and similar health care facilities.

(1) Introduction. ~~This section explains the application of business and occupation (B&O), retail sales, and use taxes to persons operating hospitals as defined in RCW 70.41.020, nursing homes as defined in RCW 18.51.010, boarding homes as defined in RCW 18.20.020, adult family homes as defined in RCW 70.128.010, and similar health care facilities.~~

~~The department of revenue (department) has adopted other rules dealing with the taxability of various activities relating to the provision of health care. Readers may want to refer to the following rules for additional information:~~

~~(a) WAC 458-20-150 Optometrists, ophthalmologists, and opticians;~~

~~(b) WAC 458-20-151 Dentists and other health care providers, dental laboratories, and dental technicians;~~

~~(c) WAC 458-20-18801 Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen; and~~

~~(d) WAC 458-20-233 Tax liability of medical and hospital service bureaus and associations and similar health care organizations.~~

~~(2) **Personal and professional services of hospitals,**~~

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~~nursing homes, boarding homes, and similar health care facilities.~~ This subsection provides information about the application of B&O tax to the personal and professional services of hospitals, nursing homes, boarding homes, and similar health care facilities. For information regarding B&O tax deductions and exemptions for persons operating health care facilities, readers should refer to subsection (3) of this section.

~~(a) Public or nonprofit hospitals.~~ The gross income of public or nonprofit hospitals derived from providing personal or professional services to inpatients, is subject to B&O tax under the public or nonprofit hospitals classification. RCW 82.04.260. For the purpose of this section, "public or nonprofit hospitals" are hospitals, as defined in RCW 70.41.020, operated as nonprofit corporations, operated by political subdivisions of the state (e.g., a hospital district operated by a county government), or operated by but not owned by the state.

~~Gross income of public or nonprofit hospitals derived from providing personal or professional services for persons other than inpatients is generally subject to B&O tax under the service and other activities classification. RCW 82.04.290. Thus, for example, amounts received for services provided to outpatients, income received for providing nonmedical services, interest received on patient accounts receivable, and amounts received for providing transcribing services to physicians are~~

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~~subject to service and other activities B&O tax.~~

~~(i) Clinics and departments operated by public or nonprofit hospitals. Gross income derived from medical clinics and departments providing services to both inpatients and outpatients and operated by a public or nonprofit hospital is subject to B&O tax under the public or nonprofit hospitals classification where the clinic or department is an integral, interrelated, and essential part of the hospital. Otherwise, the gross income derived from medical clinics and departments providing services to both inpatients and outpatients and operated by a public or nonprofit hospital is subject to B&O tax under the service and other activities classification.~~

~~Relevant factors for determining whether a medical clinic or department operated by a public or nonprofit hospital is an integral, interrelated, and essential part of the hospital include whether the clinic or department is located at the hospital facility and whether the clinic or department furnishes the type of services normally provided by hospitals, such as twenty-four hour intake and emergency services.~~

~~The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.~~

~~(A) Acme Hospital is a nonprofit hospital. Acme has a~~

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~~medical clinic that is separate but physically located within the hospital. However, the clinic is open only during regular business hours and provides no domiciliary care or overnight facilities to its patients. The clinic is staffed, equipped, administered, and provides the type of medical services that one would expect to receive in the average physician's office. Acme's medical clinic is not an integral, interrelated, and essential part of Acme Hospital. Gross receipts by the medical clinic are subject to service and other activities B&O tax.~~

~~(B) Acme Hospital is a nonprofit hospital. Acme has a cancer treatment facility that is physically located within the hospital. The cancer treatment facility provides the type of services normally provided by hospitals to cancer patients. Acme's cancer treatment facility is an integral, interrelated, and essential part of Acme Hospital. Gross receipts by the cancer treatment facility are subject to public or nonprofit hospitals B&O tax.~~

~~(ii) **Educational programs and services.** Amounts received by public or nonprofit hospitals for providing educational programs and services to the general public are subject to B&O tax under the public or nonprofit hospitals classification if they are an integral, interrelated, and essential part of the hospital. Otherwise, such amounts are subject to B&O tax under the service and other activities classification. Educational~~

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~~services are considered an integral, interrelated, and essential part of the hospital only if they are unique and incidental to the provision of hospitalization services (i.e., services that will be, have been, or are currently being provided to the participants). Only those educational programs and services offered by a hospital that would be very difficult or impossible to duplicate by a person other than a hospital because of the specialized body of knowledge, facilities, and equipment required are unique and incidental to the provision of hospitalization services. Amounts derived from educational programs and services are subject to service and other activities B&O tax when the educational programs or services could be provided by any physician, clinic, or trained lay person.~~

~~(b) **Other hospitals, nursing homes, and similar health care facilities.** The gross income derived from personal and professional services of hospitals, clinics, nursing homes, and similar health care facilities, other than public or nonprofit hospitals described above in (a) of this subsection and hospitals owned by the state, is subject to service and other activities B&O tax. The gross income received by the state of Washington from operating a hospital or other health care facility, whether or not the hospital or other facility is owned by the state, is not subject to B&O tax. Nursing homes should~~

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~~refer to subsection (6) of this section for information regarding the quality maintenance fee imposed under chapter 82.71 RCW.~~

~~The following definitions apply for purposes of this section:~~

~~(i) "Hospital" has the same meaning as in RCW 70.41.020; and~~

~~(ii) "Nursing home" has the same meaning as in RCW 18.51.010.~~

~~(c) **Boarding homes.** Effective July 1, 2004, persons operating boarding homes licensed under chapter 18.20 RCW are entitled to a preferential B&O tax rate. See RCW 82.04.2908. Persons operating licensed boarding homes should report their gross income derived from providing room and domiciliary care to residents under the licensed boarding homes B&O tax classification. For the purpose of this section, "boarding home" and "domiciliary care" have the same meaning as in RCW 18.20.020. Refer to subsection (3)(h) of the section for B&O tax deductions and exemptions available to boarding homes.~~

~~(d) **Nonprofit corporations and associations performing research and development.** There is a separate B&O tax rate that applies to nonprofit corporations and nonprofit associations for income received in performing research and development within this state, including medical research. See RCW 82.04.260.~~

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~~(e) Can a nursing home or boarding home claim a B&O tax exemption for the rental of real estate?~~ The primary purpose of a nursing home is to provide medical care to its residents. The primary purpose of boarding homes is to assume general responsibility for the safety and well-being of its residents and to provide other services to residents such as housekeeping, meals, laundry, and activities. Boarding homes may also provide residents with assistance with activities of daily living, health support services, and intermittent nursing services. Because the primary purpose of nursing homes and boarding homes is to provide services and not to lease or rent real property, no part of the gross income of a nursing home or boarding home may be exempted from B&O tax as the rental of real estate.

~~(f) Adjustments to revenues:~~ Many hospitals will provide medical care without charge or where some portion of the charge will be canceled. In other cases, medical care is billed to patients at "standard" rates but is later adjusted to reduce the charges to the rates established by contract with medicare, medicaid, or private insurers. In these situations the hospital must initially include the total charges as billed to the patient as gross income unless the hospital's records clearly indicate the amount of income to which it will be entitled under its contracts with insurance carriers. Where tax returns are

initially filed based on gross charges, an adjustment may be

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~~taken on future tax returns after the hospital has adjusted its records to reflect the actual amounts collected. In no event may the hospital reduce the amount of its current gross income by amounts that were not previously reported on its excise tax return. If the tax rate changes from the time the B&O tax was first paid on the gross charges and the time of the adjustment, the hospital must file amended tax returns to report the B&O tax on the transaction as finally completed at the rate in effect when the service was performed.~~

~~(g) **What are the tax consequences when a hospital contracts with an independent contractor to provide medical services at the hospital?** When a hospital contracts with an independent contractor (service provider) to provide medical services such as managing and staffing the hospital's emergency department, the hospital may not deduct the amount paid to the service provider from its gross income. If, however, the patients are alone liable for paying the service provider, and the hospital has no personal liability, either primarily or secondarily, for paying the service provider, other than as agent for the patients, then the hospital may deduct from its gross income amounts paid to the service provider.~~

~~In addition, the service provider is subject to service and other activities B&O tax on the amount received from the hospital for providing these services for the hospital. If the~~

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~~service provider subcontracts with third parties, such as physicians or nurses, to help provide medical services as independent contractors, the service provider may not deduct from its gross income amounts paid to the subcontractors where the service provider is personally liable, either primarily or secondarily, for paying the subcontractors. If, however, the hospital is alone liable for paying the subcontractors, and the service provider has no personal liability, either primarily or secondarily, other than as agent for the hospital, then the service provider may deduct from its gross income amounts paid to the subcontractors. For additional information regarding deductible advances and reimbursements, refer to WAC 458-20-111 (Advances and reimbursements).~~

~~(3) **B&O tax deductions, credits, and exemptions.** This subsection provides information about several B&O tax deductions, credits, and exemptions available to persons operating medical or other health care facilities.~~

~~(a) **Organ procurement organizations.** Amounts received by a qualified organ procurement organization under 42 U.S.C. Sec. 273(b) in effect as of January 1, 2001, to the extent that the amounts are exempt from federal income tax, are exempt from B&O tax. RCW 82.04.326. This exemption is effective March 22, 2002.~~

~~(b) **Contributions, donations, and endowment funds.** A B&O~~

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~~tax deduction is provided by RCW 82.04.4282 for amounts received as contributions, donations, and endowment funds, including grants, which are not in exchange for goods, services, or business benefits. For example, B&O tax deduction is allowed for donations received by a public hospital, as long as the donors do not receive any goods, services, or any business benefits in return. On the other hand, a public hospital is not allowed to take a B&O tax deduction on amounts received from a state university for work-study programs or training seminars for doctors, because the university receives business benefits in return, as students receive education and training while enrolled in the university's degree programs.~~

~~The deductible amounts should be included in the gross income reported on the excise tax return and then deducted on the return to determine the amount of taxable income.~~

~~Deductions taken must be identified on the appropriate deduction detail page of the excise tax return.~~

~~(c) **Adult family homes.** The gross income derived from personal and professional services of adult family homes licensed by the department of social and health services (DSHS), or which are specifically exempt from licensing under the rules of DSHS, is exempt from B&O tax under RCW 82.04.327. The exemption under RCW 82.04.327 does not apply to persons who provide home care services to clients in the clients' own~~

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~~residences.~~

~~For the purpose of this section, "adult family home" has the same meaning as in RCW 70.128.010.~~

~~(d) **Nonprofit kidney dialysis facilities, hospice agencies, and certain nursing homes and homes for unwed mothers.** B&O tax does not apply to amounts received as compensation for services rendered to patients or from sales of drugs for human use pursuant to a prescription furnished as an integral part of services rendered to patients by kidney dialysis facilities operated as a nonprofit corporation, nonprofit hospice agencies licensed under chapter 70.127 RCW, and nursing homes and homes for unwed mothers operated as religious or charitable organizations. RCW 82.04.4289. This exemption applies only if no part of the net earnings received by such an institution inures, directly or indirectly, to any person other than the institution entitled to this exemption. This exemption is available to nonprofit hospitals for income from the operation of kidney dialysis facilities if the hospital accurately identifies and accounts for the income from this activity.~~

~~Examples of nursing homes and homes for unwed mothers operated as religious or charitable organizations include nursing homes operated by church organizations or by nonprofit corporations designed to assist alcoholics in recovery and rehabilitation. Nursing homes and homes for unwed mothers~~

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~~operated by governmental entities, including public hospital districts, do not qualify for the B&O tax exemption provided in RCW 82.04.4289.~~

~~—— (c) **Government payments made to health or social welfare organizations.** A B&O tax deduction is provided by RCW 82.04.4297 to a health or social welfare organization, as defined in RCW 82.04.431, for amounts received directly from the United States, any instrumentality of the United States, the state of Washington, or any municipal corporation or political subdivision of the state of Washington as compensation for health or social welfare services. A deduction is not allowed, however, for amounts that are received under an employee benefit plan. The deductible amounts should be included in the gross income reported on the excise tax return and then deducted on the tax return to determine the amount of taxable income. Deductions taken must be identified on the appropriate deduction detail page of the excise tax return. Readers should refer to WAC 458-20-169 (Nonprofit organizations) for additional information regarding this deduction.~~

~~—— For purposes of the deduction provided by RCW 82.04.4297, "employee benefit plan" includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in WAC ([1/8/141/6/141/3/141/17/12](#) 2:09 PM2:37 PM7:13 AM2:10 PM)~~

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~~sections 125, 401, 403, 408, 457, and 501 (c) (9) and (17) through (23) of the Internal Revenue Code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan, trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law.~~

~~(f) **Amounts received under a health service program subsidized by federal or state government.** A public hospital that is owned by a municipal corporation or political subdivision, or a nonprofit hospital, or a nonprofit community health center, or a network of nonprofit community health centers, that qualifies as a health and social welfare organization as defined in RCW 82.04.431, may deduct from the measure of B&O tax amounts received as compensation for health-care services covered under the federal medicare program authorized under Title XVIII of the federal Social Security Act; medical assistance, children's health, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. RCW 82.04.4311. This deduction applies to amounts received directly or through a third party from the qualified programs or plans. However, this deduction does not apply to amounts received from patient copayments or patient deductibles. The deductible amounts should be included in the gross income reported on the excise tax return and then deducted on the return to determine the amount of taxable~~

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~~income. Deductions taken must be identified on the appropriate deduction detail page of the excise tax return.~~

~~For purposes of the deduction provided by RCW 82.04.4311, "community health center" means a federally qualified health center as defined in 42 U.S.C. Sec. 1396d as existed on August 1, 2005.~~

~~(i) **Effective date of deduction.** The deduction for a public hospital owned by a municipal corporation or political subdivision and for a nonprofit hospital is effective April 2, 2002. Taxpayers who have paid B&O taxes between January 1, 1998, and April 2, 2002, on amounts that would qualify for this deduction are entitled to a refund. In addition, tax liability for accrued but unpaid taxes that would be deductible under this subsection (3)(f) are waived. For information regarding refunds, refer to WAC 458-20-229 (Refunds).~~

~~The deduction for a nonprofit community health center or a network of nonprofit community health centers is effective August 1, 2005.~~

~~(ii) **Example.** Acme Hospital is a nonprofit hospital that qualifies as a health and social welfare organization as defined in RCW 82.04.431. Acme receives \$1,000 for providing health care services to Jane, who qualifies for the federal medicare program authorized under Title XVIII of the federal Social~~

~~Security Act. Jane is covered in a health care plan that is a~~
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~~combination of medicare, which is B&O tax deductible by Acme, and a medicare plus plan, which is paid for by Jane and is not B&O tax deductible by Acme. Jane pays \$20 to Acme as patient copayments. Medicare pays \$600 to Acme for the health care services, and the medicare plus plan pays \$380. Acme may only deduct the \$600 received from medicare.~~

~~(g) **Blood and tissue banks.** Amounts received by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank are exempt from B&O tax to the extent the amounts are exempt from federal income tax. RCW 82.04.324. For the purposes of this exemption, the following definitions apply:~~

~~(i) **Qualifying blood bank.** "Qualifying blood bank" means a blood bank that qualifies as an exempt organization under 26 U.S.C. 501 (c) (3) as existing on June 10, 2004, is registered under 21 C.F.R., part 607 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood. "Qualifying blood bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.~~

~~(ii) **Qualifying tissue bank.** "Qualifying tissue bank" means a tissue bank that qualifies as an exempt organization under 26 U.S.C. 501 (c) (3) as existing on June 10, 2004, is registered under 21 C.F.R., part 1271 as existing on June 10, 2004, and whose primary business purpose is the recovery,~~

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~~processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, heart valve tissue, or human eye tissue. "Qualifying tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.~~

~~(iii) **Qualifying blood and tissue bank.** "Qualifying blood and tissue bank" is a bank that qualifies as an exempt organization under 26 U.S.C. 501 (c) (3) as existing on June 10, 2004, is registered under 21 C.F.R., Part 607 and Part 1271 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood, and the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, and heart valve tissue. "Qualifying blood and tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.~~

~~(h) **Boarding homes.** Effective July 1, 2004, licensed boarding home operators are entitled to a B&O tax deduction for amounts received as compensation for providing adult residential care, enhanced adult residential care, or assisted living services under contract with the department of social and health services authorized by chapter 74.39A RCW to residents who are~~

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~~medicaid recipients. RCW 82.04.4337. For the purpose of this section, "adult residential care," "enhanced adult residential care," and "assisted living services" have the same meaning as in RCW 74.39A.009.~~

~~Effective July 1, 2005, B&O tax does not apply to the amounts received by a nonprofit boarding home licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the boarding home. RCW 82.04.4264. For purposes of this section, "nonprofit boarding home" means a boarding home that is operated as a religious or charitable organization, is exempt from federal income tax under 26 U.S.C. Sec. 501 (c) (3), is incorporated under chapter 24.03 RCW, is operated as part of a nonprofit hospital, or is operated as part of a public hospital district.~~

~~(i) **Comprehensive cancer centers.** Effective July 1, 2006, B&O tax does not apply to the amounts received by a comprehensive cancer center to the extent the amounts are exempt from federal income tax. RCW 82.04.4265. For purposes of this section, "comprehensive cancer center" means a cancer center that has written confirmation that it is recognized by the National Cancer Institute as a comprehensive cancer center and that qualifies as an exempt organization under 26 U.S.C. Sec. 501 (c) (3) as existing on July 1, 2006.~~

~~(j) **Hospital safe patient handling credit.**~~

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~~(i) RCW 82.04.4485 allows a hospital to take a credit against the B&O tax for the cost of purchasing mechanical lifting devices and other equipment that are primarily used to minimize patient handling by health care providers. In order to qualify for credit, the purchases must be made as part of a safe patient handling program developed and implemented by the hospital in compliance with RCW 70.41.390. The credit is equal to one hundred percent of the cost of the mechanical lifting devices or other equipment.~~

~~(ii) No application is necessary for the credit; however, a hospital taking a credit under this section must maintain records, as required by the department, necessary to verify eligibility for the credit under this subsection. The hospital is subject to all of the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds shall be granted for credits under this subsection.~~

~~(iii) The maximum credit that may be earned under this section for each hospital is limited to one thousand dollars for each acute care available inpatient bed.~~

~~(iv) Credits are available on a first in time basis. The department shall disallow any credits, or portion thereof, that would cause the total amount of credits claimed statewide under this subsection to exceed ten million dollars. If the ten~~

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~~million dollar limitation is reached, the department will notify hospitals that the annual statewide limit has been met. In addition, the department will provide written notice to any hospital that has claimed tax credits after the ten million dollar limitation in this subsection has been met. The notice will indicate the amount of tax due and shall provide that the tax be paid within thirty days from the date of such notice. The department will not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.~~

~~(v) Credit may not be claimed under this section for the acquisition of mechanical lifting devices and other equipment if the acquisition occurred before June 7, 2006.~~

~~(vi) Credit may not be claimed under this section for any acquisition of mechanical lifting devices and other equipment that occurs after December 30, 2010.~~

~~(vii) The department shall issue an annual report on the amount of credits claimed by hospitals under this section, with the first report due on July 1, 2008.~~

~~(viii) For the purposes of this subsection, "hospital" has the meaning provided in RCW 70.41.020.~~

~~(k) **Prescription drugs administered by the medical service**~~

~~provider. Effective October 1, 2007, RCW 82.04.620 allows a~~
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~~deduction from the service and other activities classification of the B&O tax (RCW 82.04.290(2)) for amounts received by physicians or clinics for drugs for infusion or injection by licensed physicians or their agents for human use pursuant to a prescription. This deduction only applies to amounts that:~~

~~—— (i) Are separately stated on invoices or other billing statements;~~

~~—— (ii) Do not exceed the then current federal rate; and~~

~~—— (iii) Are covered or required under a health care service program subsidized by the federal or state government.~~

~~—— For purpose of this deduction only, amounts that "are covered or required under a health care service program subsidized by the federal or state government" include any required drug copayments made directly from the patient to the physician or clinic.~~

~~—— (A) "Federal rate" means the rate at or below which the federal government or its agents reimburse providers for prescription drugs administered to patients as provided for in the medicare, Part B drugs average sales price information resource as published by the United States Department of Health and Human Services, or any index that succeeds it.~~

~~—— (B) The deduction is available on an "all or nothing" basis against the total of amounts received for a specific drug~~

~~charge. If the total amount received by the physician or clinic~~

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~~for a specific drug exceeds the federal reimbursement rate, none of the total amount received qualifies for the deduction (including any required copayment received directly from the patient). In other words, a physician or clinic may not simply take an "automatic" deduction equal to the federal reimbursement rate for each drug.~~

~~(C) For physicians or clinics reporting their taxes on the accrual basis, the total amount charged for a drug must be included in the gross income at the time of billing if it is in excess of the federal rate. However, in some cases the gross income from charges may be adjusted, as indicated in subsection (2)(f) of this section. If such an adjustment to gross income is appropriate, the exemption discussed in this subsection may also be taken at the time of billing if the adjustment leaves the physician or clinic contractually liable to receive a total amount (including any copayment received from the patient) that is not in excess of the federal rate.~~

~~(1) **Temporary medical housing provided by a health or social welfare organization.** Effective July 1, 2008, RCW 82.08.997 created an exemption from state and local sales taxes and lodging taxes for temporary medical housing provided by a health or social welfare organization. The term "health or social welfare organization" is defined in RCW 82.04.431.~~

~~"Temporary medical housing" means transient lodging and related~~

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~~services provided to a patient or the patient's immediate family, legal guardian, or other persons necessary to the patient's mental or physical well-being.~~

~~(i) The exemption applies to the following taxes:~~

~~(A) Retail sales tax levied under RCW 82.09.020;~~

~~(B) Lodging taxes levied under chapter 67.28 RCW;~~

~~(C) Convention and trade center tax levied under RCW 67.40.090 and 67.40.130;~~

~~(D) Public facilities tax levied under RCW 36.100.040; and~~

~~(E) Tourism promotion areas tax levied under RCW 35.101.050.~~

~~(ii) The exemptions in this subsection apply to charges made for "temporary medical housing" only:~~

~~(A) While the patient is receiving medical treatment at a hospital required to be licensed under RCW 70.41.090 or at an outpatient clinic associated with such hospital, including any period of recuperation or observation immediately following such medical treatment; and~~

~~(B) By a person that does not furnish lodging or related services to the general public.~~

~~(4) **Sales of tangible personal property.** Retailing B&O tax applies to sales of tangible personal property sold and billed separately from the performance of personal or professional~~

~~services by hospitals, nursing homes, boarding homes, adult~~
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~~family homes, and similar health care facilities. This includes charges for making copies of medical records. In addition, retail sales tax must be collected from the buyer and remitted to the department unless the sale is specifically exempt by law.~~

~~(a) **Tangible personal property used in providing medical services to patients.** Retailing B&O and retail sales taxes do not apply to charges to a patient for tangible personal property used in providing medical services to the patient, even if separately billed. Tangible personal property used in providing medical services is not considered to have been sold separately from the medical services simply because those items are separately invoiced. These charges, even if separately itemized, are for providing medical services and are subject to B&O tax under either the public or nonprofit hospital B&O tax classification or the service and other activities classification depending on the person making the charge. For example, charges for drugs physically administered by the seller are subject to B&O tax under either the public or nonprofit hospital classification or the service and other activities classification depending on the person making the charge. On the other hand, charges for drugs sold to patients or their caregivers, either for patient self-administration or administration by a caregiver other than the seller, are subject to retailing B&O tax and retail sales tax unless specifically~~

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~~exempt by law. Readers should refer to WAC 458-20-18801 for detailed information regarding retail sales tax exemptions that apply to sales of prescription drugs and other medical items.~~

~~(b) **Sales of meals.** Although the sale of meals is generally considered to be a retail sale, hospitals, nursing homes, boarding homes, and similar health care facilities that furnish meals to patients or residents as a part of the services provided to those patients or residents are not considered to be making retail sales of meals. Thus amounts received by hospitals, nursing homes, boarding homes, and similar health care facilities for furnishing meals to patients or residents as part of the services provided to those patients or residents are subject to B&O tax under the service and other activities, public or nonprofit hospital, or licensed boarding homes classifications, depending upon the person furnishing the meals.~~

~~Prepared meals sold to senior citizens, disabled persons, or low income persons by a not for profit organization organized under chapter 24.03 or 24.12 RCW are exempt from retail sales and use taxes. RCW 82.08.0293 and 82.12.0293. The exemptions apply to sales of prepared meals to not-for-profit organizations organized under chapter 24.03 or 24.12 RCW, that provide the meals to senior citizens, disabled persons, or low income persons as a part of the patient services they render.~~

~~Hospitals, nursing homes, boarding homes, and similar~~
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~~health care facilities may have restaurants, cafeterias, or other dining facilities where meals are sold for cash or credit to doctors, nurses, other employees, and visitors. Some of these facilities may provide meals to their employees at no charge. Under these circumstances, all sales of meals to such persons are subject to retailing B&O and retail sales taxes, including the value of meals provided at no charge to employees. For additional information regarding the sale of meals, including meals furnished to employees, refer to WAC 458-20-119 (Sales of meals). Hospitals, nursing homes, boarding homes, and similar health care facilities that provide free meals to persons other than employees, such as visitors, should refer to WAC 458-20-124 (Restaurants, cocktail bars, taverns and similar businesses) for information about the taxability of meals given away free of charge.~~

~~(c) **Sales of medical supplies, chemicals, or materials to a comprehensive cancer center.** Effective July 1, 2006, sales of medical supplies, chemicals, or materials to a comprehensive cancer center are exempt from retail sales and use tax. RCW 82.08.808 and 82.12.808. This exemption, however, does not apply to the sales of construction materials, office equipment, building equipment, administrative supplies, or vehicles.~~

~~(i) **Medical supplies.** For purposes of this exemption, "medical supplies" means any item of tangible personal property,~~

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~~including any repair and replacement parts for such tangible personal property, used by a comprehensive cancer center for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:~~

~~—— (A) Provide preparatory treatment of blood, bone, or tissue;~~

~~—— (B) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and~~

~~—— (C) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.~~

~~—— (ii) **Chemicals.** For purposes of this exemption, "chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.~~

~~—— (iii) **Materials.** For purposes of this exemption, "materials" means any item of tangible personal property, including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging,~~

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~~distributing, or using blood, bone, or tissue.~~

~~(iv) **Research.** For purposes of this exemption, "research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.~~

~~(5) Equipment and supplies used by health care providers. Hospitals, nursing homes, adult family homes, boarding homes, and similar health care providers are required to pay retail sales tax on purchases of equipment and supplies unless specifically exempt by law. Readers should refer to WAC 458-20-18801 for detailed information regarding exemptions that are available to these health care providers, as well as persons performing medical research and organ procurement organizations.~~

~~(a) **Purchases for resale.** Purchases of tangible personal property for resale without intervening use are not subject to retail sales tax. Persons purchasing tangible personal property for resale must furnish 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 seller 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.~~

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~~(b) Buyer's responsibility to remit deferred sales or use tax.~~ If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. For detailed information regarding the use tax, refer to WAC 458-20-178 (Use tax).

~~(i) How do I report deferred sales or use tax.~~ Persons registered with the department and required to file tax returns should report deferred sales or use tax on their excise tax return. The excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. If a deferred sales tax or use tax liability is incurred by a person who is not required to obtain a tax registration endorsement from the department, the person must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department.

~~(ii) Where can I obtain a Consumer Use Tax Return?~~ The Consumer Use Tax Return may be obtained from the department's internet site at: <http://dor.wa.gov>, or by calling the department's telephone information center at 1-800-647-7706.

~~(6) Quality maintenance fee imposed on nursing homes.~~

Effective July 1, 2007, the quality maintenance fee imposed on WAC ([1/8/141/6/141/3/141/17/12](#) 2:09 PM2:37 PM7:13 AM2:10 PM)

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~~operators of nonexempt nursing facilities in Washington was repealed. Legislation passed in 2006 (section 1, chapter 241, Laws of 2006) repealed chapter 82.71 RCW, which imposed the fee. Originally effective on July 1, 2003, RCW 82.71.020 imposed a quality maintenance fee on every nursing home in this state not exempt from the fee under RCW 74.46.091. The amount of the quality maintenance fee was in addition to any other tax imposed upon nursing homes. Nursing homes were required to report the number of patient days and remit the fee to the department on a monthly basis. Persons with questions about how the quality maintenance fee affected individual nursing home operators or about the exemption provided by RCW 74.46.091 should contact the department of social and health services.~~

~~For purposes of this section, "patient day" means a calendar day of care provided to a nursing home resident, excluding a medicare patient day. Patient days include the day of admission and exclude the day of discharge, except that, when admission and discharge occur on the same day, one day of care shall be deemed to exist. "Medicare patient day" means a patient day for medicare beneficiaries on a medicare Part A stay and a patient day for persons who have opted for managed care coverage using their medicare benefit.~~

This rule explains the application of business and occupation

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(B&O), retail sales, and use taxes to persons operating:

- hospitals as defined in RCW 70.41.020,
- nursing homes as defined in RCW 18.51.010,
- assisted living facilities as defined in RCW 18.20.020,
- adult family homes as defined in RCW 70.128.010, and
- similar health care facilities.

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

(b) **What other rules might apply?** The department of revenue (department) has adopted other rules that may apply to the provision of health care. Readers may want to refer to the following rules for additional information:

- (i) WAC 458-20-102 Reseller permits;
- (ii) WAC 458-20-111 Advances and reimbursements;
- (iii) WAC 458-20-150 Optometrists, ophthalmologists, and opticians;
- (iv) WAC 458-20-151 Dentists and other health care providers, dental laboratories, and dental technicians;
- (v) WAC 458-20-169 Nonprofit organizations;
- (vi) WAC 458-20-178 Use tax;
- (vii) WAC 458-20-18801 Medical substances, devices, and supplies for humans; drugs prescribed for human use; medically prescribed oxygen; prosthetic devices; mobility enhancing equipment; and durable medical equipment.

(viii) WAC 458-20-233 Tax liability of medical and hospital

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service bureaus and associations and similar health care organizations.

(2) Personal and professional services of hospitals. For the purpose of this subsection, the following definitions apply:

- Hospital. The term "hospital" is as defined in RCW 70.41.020. It includes hospitals that come within the scope of chapter 71.12 RCW, but only if they are also licensed under chapter 70.41 RCW.
- Public or nonprofit hospitals. Public or nonprofit hospitals are hospitals operated by the state or any of its political subdivisions or operated as nonprofit corporations.

(a) Hospital services to patients. Gross income earned by hospitals for providing personal or professional services to both inpatients and outpatients is subject to B&O tax as shown on the table below. RCW 82.04.260.

<u>Report income from providing personal or professional services.</u>	<u>Time frame Prior to 5/1/10</u>	<u>Time frame 5/1/10 and after</u>	
<u>For profit hospitals</u>	<u>Service & Other B&O Tax Classification</u>	<u>For Profit Hospitals B&O Tax Classification</u>	

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<u>Public & nonprofit hospitals</u>	<u>Public or Nonprofit Hospitals B&O Tax Classification</u>	<u>Public or Nonprofit Hospitals B&O Tax Classification</u>

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Gross income earned for providing nonmedical services, interest received on patient accounts receivable, and amounts earned for providing transcribing services to physicians are subject to service and other activities B&O tax.

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(b) **Clinics and departments operated by hospitals.** Gross income earned by medical clinics and departments providing services to both inpatients and outpatients and operated by a hospital is subject to B&O tax as shown in the table in subsection (2)(a) where the operation of a medical clinic or department is covered by the hospital's license. If the clinic or department is not covered by the hospital's license, the gross income earned by a medical clinic or department providing services to inpatients and outpatients is subject to B&O tax under the service and other activities B&O tax classification.

(i) **Example 1.** Acme Hospital is a nonprofit hospital. Acme has a medical clinic that is physically located within the hospital. The clinic is open only during regular business hours (8 to 5) and provides no domiciliary care or overnight facilities to its patients. The medical clinic is covered under Acme Hospital's hospital license. Gross income earned by the medical clinic for providing patient care is subject to the Public and Nonprofit Hospital B&O Tax Classification.

(ii) **Example 2.** Mountain Hospital is a for profit hospital

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with a cancer treatment facility that is located one mile from the hospital campus. The cancer treatment facility provides the type of services normally provided by hospitals to cancer patients but only during regular business hours. The cancer treatment facility is covered under the hospital's license. Gross income earned by the cancer treatment facility is subject to B&O tax as shown in the table in subsection (2) (a).

(c) Educational programs and services. Amounts earned by public or nonprofit hospitals for providing educational programs and services to the general public are subject to B&O tax under the public or nonprofit hospitals classification if the educational programs and services are an integral, interrelated, and essential part of the hospital. Otherwise, such amounts are subject to B&O tax under the service and other activities tax classification. Educational services are considered an integral, interrelated, and essential part of the hospital only if they are unique and incidental to the provision of hospitalization services. Only those educational programs and services offered by a hospital that would be very difficult or impossible to duplicate by a person other than a hospital because of the specialized body of knowledge, facilities, and equipment required are unique and incidental to the provision of hospitalization services. Amounts received from educational programs and services are subject to the service and other activities B&O tax when the educational programs or services could be provided by any physician, clinic, or trained lay person.

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(3) Personal and professional services from other medical clinics, nursing homes, and similar health care facilities.

Gross income earned by medical clinics, nursing homes, and similar health care facilities for providing personal and professional services is subject to service and other activities B&O tax. Physicians performing these services are also subject to service and other activities B&O tax on gross income earned. Services provided are ones not integral, interrelated, and an essential part of a hospital operation.

(4) Assisted living facilities and domiciliary care. For the purpose of this rule, "assisted living facilities" and "domiciliary care" have the same meaning as found in RCW 18.20.020. Persons operating assisted living facilities licensed under chapter 18.20 RCW are entitled to a preferential B&O tax rate. See RCW 82.04.2908. Persons operating licensed assisted living facilities should report their gross income derived from providing room and domiciliary care to residents under the licensed assisted living facilities B&O tax classification. Refer to subsection (9) (h) of this rule for B&O tax deductions and exemptions available to persons operating assisted living facilities.

(5) Hospitals or other health care facilities operated by the state of Washington. The gross income earned by the state of Washington for operating a hospital or other health care facilities, whether or not owned by the state, is not subject to B&O tax.

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(6) Nonprofit corporations and associations performing research and development. A separate B&O tax rate applies to nonprofit corporations and nonprofit associations for gross income earned in performing research and development within this state, including medical research. See RCW 82.04.260.

(7) Sales of tangible personal property. Retailing B&O tax applies to sales of tangible personal property sold and billed separately from the performance of personal or professional services by hospitals, nursing homes, assisted living facilities, adult family homes, and similar health care facilities. This includes charges for making copies of medical records. In addition, the seller must collect retail sales tax from the buyer and remit the tax to the department unless the sale is specifically exempt by law.

(a) Tangible personal property used in providing medical services to patients. Retailing B&O and retail sales taxes do not apply to charges to a patient for tangible personal property used in providing medical services to the patient, even if separately billed. Tangible personal property used in providing medical services is not considered to have been sold separately from the medical services simply because those items are separately invoiced. These charges, even if separately itemized, are for providing medical services.

For example, charges for drugs physically administered by the seller are subject to B&O tax under the appropriate tax classification as shown in the table in subsection (2) (a) based

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on the person making the charge. On the other hand, charges for drugs sold to patients or their caregivers, either for patient self-administration or administration by a caregiver other than the seller, are subject to retailing B&O tax and retail sales tax unless specifically exempt by law. Readers should refer to WAC 458-20-18801 for detailed information regarding retail sales tax exemptions that apply to sales of prescription drugs and other medical items.

(b) Sales of meals. Although the sale of meals is generally considered to be a retail sale, hospitals, nursing homes, assisted living facilities, and similar health care facilities that furnish meals to patients or residents as a part of the services provided to those patients or residents are not considered to be making retail sales of meals. Thus amounts earned by hospitals, nursing homes, assisted living facilities, and similar health care facilities for furnishing meals to patients or residents are subject to B&O tax as part of the services provided to those patients or residents. Such amounts are not subject to retail sales tax.

Prepared meals sold to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW are exempt from retail sales and use taxes. RCW 82.08.0293 and 82.12.0293. The exemptions apply to sales of prepared meals to not-for-profit organizations organized under chapter 24.03 or 24.12 RCW, that provide the meals to senior citizens, disabled persons, or low-income persons as a part of the patient services they render.

Hospitals, nursing homes, assisted living facilities, and

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similar health care facilities may have restaurants, cafeterias, or other dining facilities where meals are sold to doctors, employees, and visitors. These sales of meals are subject to retailing B&O and retail sales taxes. For additional information regarding the sale of meals, including meals furnished to employees, refer to WAC 458-20-124.

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(8) **Industry reporting.** This subsection discusses common reporting issues affecting persons operating medical or other health care facilities.

(a) **Adjustments to revenues.** Many hospitals will provide medical care without charge or where some portion of the charge will be canceled. In other cases, medical care is billed to patients at "standard" rates but is later adjusted to reduce the charges to the rates established by contract with Medicare, Medicaid, or private insurers. In these situations the hospital must initially include the total charges as billed to the patient as gross income unless the hospital's records clearly indicate the amount of income to which it will be entitled under its contracts with insurance carriers. Where tax returns are initially filed based on gross charges, an adjustment may be taken on future tax returns after the hospital has adjusted its records to reflect the actual amounts collected. In no event may the hospital reduce the amount of its current gross income by amounts that were not previously reported on its excise tax return. If the tax rate changes from the time the B&O tax was first paid on the gross charges and the time of the adjustment, the hospital must file amended tax returns to report the B&O tax on the transaction as finally completed at the rate in effect

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when the service was performed.

(b) What are the tax consequences when a hospital contracts with an independent contractor to provide medical services at the hospital? When a hospital contracts with an independent contractor (service provider) to provide medical services, such as managing and staffing the hospital's emergency department, the hospital may not deduct the amount paid to the service provider from its gross income. If, however, the patients are alone liable for paying the service provider, and the hospital has no personal liability, either primarily or secondarily, for paying the service provider, other than as agent for the patients, then the hospital may deduct from its gross income the amount it receives and pays to the service provider.

In addition, the service provider is subject to service and other activities B&O tax on the amount earned from the hospital for providing these services for the hospital. If the service provider subcontracts with a third party, such as a physician or nurse, to help provide medical services as an independent contractor, the service provider may not deduct from its gross income amounts paid to the subcontractor where the service provider is personally liable, either primarily or secondarily, for paying the subcontractor. If, however, the hospital is alone liable for paying the subcontractor, and the service provider has no personal liability, either primarily or secondarily, other than as agent for the hospital, then the service provider may deduct from its gross income the amount it receives from the hospital and pays to the subcontractor. For additional information regarding deductible advances and

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reimbursements, refer to WAC 458-20-111.

(c) Can nursing homes or assisted living facilities claim a B&O tax exemption for the rental of real estate? The purpose of nursing homes is to provide medical care to their residents. The purpose of assisted living facilities is to assume general responsibility for the safety and well-being of their residents and to provide other services to residents such as housekeeping, meals, laundry, and activities. Assisted living facilities may also provide residents with assistance with activities of daily living, health support services, and intermittent nursing services. Because the purpose of nursing homes and assisted living facilities is to provide services and not to lease or rent real property, no part of the gross income of nursing homes or assisted living facilities may be exempted from B&O tax as the rental of real estate.

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(9) B&O tax deductions, credits, and exemptions. This subsection provides information about B&O tax deductions, credits, and exemptions available to persons operating medical or other health care facilities.

Deductible amounts should be included in the gross income reported on the excise tax return and then identified on the appropriate deduction detail line of the excise tax return to determine the amount of taxable income.

(a) Organ procurement organizations. Amounts earned by a qualified organ procurement organization under 42 U.S.C. Sec. 273(b) in effect as of January 1, 2001, to the extent that the amounts are exempt from federal income tax, are exempt from B&O tax. RCW 82.04.326.

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(b) **Contributions, donations, and endowment funds.** A B&O tax deduction is provided by RCW 82.04.4282 for amounts received as contributions, donations, and endowment funds, including grants, which are not in exchange for goods, services, or business benefits. For example, a B&O tax deduction is allowed for donations received by a public hospital, as long as the donors do not receive any goods, services, or any business benefits in return. On the other hand, a public hospital is not allowed to take a B&O tax deduction on amounts earned from a state university for work-study programs or training seminars, because the university receives business benefits in return, as students receive education and training while enrolled in the university's degree programs.

(c) **Adult family homes.** The gross income derived from personal and professional services of adult family homes licensed by the department of social and health services (DSHS), or which are specifically exempt from licensing under the rules of DSHS, is exempt from B&O tax under RCW 82.04.327. The exemption under RCW 82.04.327 does not apply to persons who provide home care services to clients in the clients' own residences.

For the purpose of this rule, "adult family home" has the same meaning as in RCW 70.128.010.

(d) **Nonprofit kidney dialysis facilities, hospice agencies, and nonprofit nursing homes and homes for unwed mothers.** B&O tax does not apply to amounts earned as compensation for services rendered to patients or from sales of drugs for human use pursuant to a prescription furnished as an integral part of services rendered to patients by kidney dialysis facilities

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operated as a nonprofit corporation, nonprofit hospice agencies licensed under chapter 70.127 RCW, nonprofit nursing homes and homes for unwed mothers operated as religious or charitable organizations. RCW 82.04.4289. This exemption applies only if no part of the net earnings earned by such an institution inures, directly or indirectly, to any person other than the institution entitled to this exemption. This exemption is available to nonprofit hospitals for income from the operation of kidney dialysis facilities if the hospital accurately identifies and accounts for the income from this activity.

Examples of nonprofit nursing homes include nursing homes operated by church organizations or by nonprofit corporations designed to assist alcoholics in recovery and rehabilitation. Nursing homes and homes for unwed mothers operated by governmental entities, including public hospital districts, do not qualify for the B&O tax exemption provided in RCW 82.04.4289.

(e) **Government payments made to health or social welfare organizations.** A B&O tax deduction is provided by RCW 82.04.4297 to health or social welfare organizations, as defined in RCW 82.04.431, for amounts earned directly from the United States, any instrumentality of the United States, the state of Washington, or any municipal corporation or political subdivision of the state of Washington as compensation for health or social welfare services.

Effective August 1, 2011, RCW 82.04.4275 provides a deduction for amounts health or social welfare organizations receive as compensation for providing child welfare services

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under a government-funded program.

A deduction is not allowed, however, for amounts that are received under an employee benefit plan. For purposes of the deduction provided by RCW 82.04.4297, "employee benefit plan" includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501 (c) (9) and (17) through (23) of the Internal Revenue Code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan, trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law.

(f) Amounts earned under a health service program subsidized by federal or state government.

- A public hospital that is owned by a municipal corporation or political subdivision, or
- a nonprofit hospital, or
- a nonprofit community health center, or
- a network of nonprofit community health centers,

that qualifies as a health and social welfare organization as defined in RCW 82.04.431, may deduct from the measure of B&O tax amounts earned as compensation for health care services covered under the federal Medicare program authorized under Title XVIII of the federal Social Security Act; medical assistance, children's health, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. RCW 82.04.4311. This deduction applies to amounts

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received directly or through a third party from the qualified programs or plans. However, this deduction does not apply to amounts received from patient copayments or patient deductibles. For purposes of the deduction provided by RCW 82.04.4311, "community health center" means a federally qualified health center as defined in 42 U.S.C. Sec. 1396d as existed on August 1, 2005.

Example 3. Acme Hospital is a nonprofit hospital that qualifies as a health and social welfare organization as defined in RCW 82.04.431. Acme receives \$1,000 for providing health care services to Jane, who qualifies for the federal Medicare program authorized under Title XVIII of the federal Social Security Act. Jane is covered in a health care plan that is a combination of Medicare, which is B&O tax deductible by Acme, and a Medicare plus plan, which is paid for by Jane and is not B&O tax deductible by Acme. Jane pays \$20 to Acme as patient copayments. Medicare pays \$600 to Acme for the health care services, and the Medicare plus plan pays \$380. Acme may only deduct the \$600 received from Medicare.

(g) **Blood and tissue banks.** Except as otherwise provided, amounts earned by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank are exempt from B&O tax to the extent the amounts are exempt from federal income tax.

Effective October 1, 2013, persons claiming this exemption must report amounts exempt under this subsection to the department on their excise tax returns. Except for persons whose primary

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business purpose is the collection, preparation, and processing of blood, the exemption per person is limited to one hundred fifty thousand dollars in tax per calendar year. RCW 82.04.324.

For the purposes of this exemption, the following definitions apply:

(i) **Qualifying blood bank.** "Qualifying blood bank" means an exempt organization under 26 U.S.C. 501 (c) (3) as existing on June 10, 2004, that is registered under 21 C.F.R., part 607 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood.

Effective October 1, 2013, the definition of "qualifying blood bank" includes an exempt organization, as described above, that tests or processes blood, on behalf of itself or other qualifying blood bank or qualifying blood and tissue bank. "Qualifying blood bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(ii) **Qualifying tissue bank.** "Qualifying tissue bank" means a tissue bank that qualifies as an exempt organization under 26 U.S.C. 501 (c) (3) as existing on June 10, 2004, is registered under 21 C.F.R., part 1271 as existing on June 10, 2004, and whose primary business purpose is the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, heart valve tissue, or human eye tissue. "Qualifying tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer

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(iii) **Qualifying blood and tissue bank.** "Qualifying blood and tissue bank" means an exempt organization under 26 U.S.C. 501 (c) (3) as existing on June 10, 2004, is registered under 21 C.F.R., Part 607 and Part 1271 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood, and the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, and heart valve tissue.

Effective October 1, 2013, the definition of "qualifying blood and tissue bank" includes an exempt organization, as described above, that tests or processes blood, on behalf of itself or other qualifying blood bank or qualifying blood and tissue bank. "Qualifying blood and tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(h) **Assisted living facilities.** Licensed assisted living facility operators may take a B&O tax deduction for amounts earned as compensation for providing adult residential care, enhanced adult residential care, or assisted living services under contract with the department of social and health services authorized by chapter 74.39A RCW to residents who are Medicaid recipients. RCW 82.04.4337. For the purpose of this rule, "adult residential care," "enhanced adult residential care," and "assisted living services" have the same meaning as in RCW 74.39A.009.

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In addition, B&O tax does not apply to the amounts earned by a nonprofit assisted living facility licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the assisted living facility. RCW 82.04.4264. For purposes of this rule, "nonprofit assisted living facility" means an assisted living facility that is operated as a religious or charitable organization, is exempt from federal income tax under 26 U.S.C. Sec. 501 (c) (3), is incorporated under chapter 24.03 RCW, is operated as part of a nonprofit hospital, or is operated as part of a public hospital district.

(i) **Comprehensive cancer centers.** B&O tax does not apply to the amounts earned by a comprehensive cancer center to the extent the amounts are exempt from federal income tax. RCW 82.04.4265. For purposes of this rule, "comprehensive cancer center" means a cancer center that has written confirmation that it is recognized by the National Cancer Institute as a comprehensive cancer center and that qualifies as an exempt organization under 26 U.S.C. Sec. 501 (c) (3) as existing on July 1, 2006.

(j) **Prescription drugs administered by the medical service provider.** Effective October 1, 2007, RCW 82.04.620 allows a deduction from the service and other activities classification of the B&O tax (RCW 82.04.290) for amounts earned by physicians or clinics for drugs for infusion or injection by licensed physicians or their agents for human use pursuant to a prescription. This deduction only applies to amounts that:

(i) Are separately stated on invoices or other billing statements;

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(ii) Do not exceed the then current federal rate; and
(iii) Are covered or required under a health care service program subsidized by the federal or state government.

For purpose of this deduction only, amounts that "are covered or required under a health care service program subsidized by the federal or state government" include any required drug copayments made directly from the patient to the physician or clinic.

(A) "Federal rate" means the rate at or below which the federal government or its agents reimburse providers for prescription drugs administered to patients as provided for in the Medicare, Part B, drugs average sales price information resource as published by the United States Department of Health and Human Services, or any index that succeeds it.

(B) The deduction is available on an "all or nothing" basis against the total amount earned for a specific drug charge. If the total amount earned by the physician or clinic for a specific drug exceeds the federal reimbursement rate, none of the total amount earned qualifies for the deduction (including any required copayment received directly from the patient). In other words, a physician or clinic may not simply take an "automatic" deduction equal to the federal reimbursement rate for each drug.

(C) For physicians or clinics reporting taxes on the accrual basis, the total amount charged for a drug must be included in the gross income at the time of billing if it is in excess of the federal rate. However, in some cases the gross income from charges may be adjusted, as indicated in subsection

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(8) (a) of this rule. If such an adjustment to gross income is appropriate, the exemption discussed in this subsection may also be taken at the time of billing if the adjustment leaves the physician or clinic contractually liable to receive a total amount (including any copayment received from the patient) that does not exceed the federal rate.

(k) Hospital safe patient handling credit - Expired December 30, 2010.

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(i) RCW 82.04.4485 allowed a hospital to take a credit against the B&O tax for the cost of purchasing mechanical lifting devices and other equipment that are primarily used to minimize patient handling by health care providers. To qualify for the credit, the purchases must have been made as part of a safe patient handling program developed and implemented by the hospital in compliance with RCW 70.41.390. The credit was equal to one hundred percent of the cost of the mechanical lifting devices or other equipment. This credit does not apply to purchases made after December 30, 2010.

(ii) No application is necessary for the credit; however, a hospital taking a credit under this rule must maintain records, as required by the department, necessary to verify eligibility for the credit. The hospital is subject to all of the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds shall be granted for credits under this subsection.

(iii) The maximum credit that may be earned under this rule for each hospital is limited to one thousand dollars for each

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acute care available inpatient bed.

(10) Sales, use, and other specified taxes deductions and exemptions. Unless otherwise exempt by law, hospitals, nursing homes, adult family homes, assisted living facilities, and similar health care providers are required to pay retail sales tax on purchases of equipment and supplies. The following deductions and exemptions are available to qualified persons.

(a) Temporary medical housing provided by a health or social welfare organization. Effective July 1, 2008, RCW 82.08.997 authorized an exemption from state and local sales taxes and lodging taxes for temporary medical housing provided by a health or social welfare organization. The term "health or social welfare organization" is defined in RCW 82.04.431. "Temporary medical housing" means transient lodging and related services provided to a patient or the patient's immediate family, legal guardian, or other persons necessary to the patient's mental or physical well-being.

(i) The exemption applies to the following taxes:

(A) Retail sales tax levied under RCW 82.08.020;

(B) Lodging taxes levied under chapter 67.28 RCW;

(C) Convention and trade center tax levied under chapter 36.100 RCW;

(D) Public facilities tax levied under RCW 36.100.040; and

(E) Tourism promotion areas tax levied under RCW 35.101.050.

(ii) The exemptions in this subsection apply to charges made for "temporary medical housing" only:

(A) While the patient is receiving medical treatment at a

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hospital required to be licensed under RCW 70.41.090 or at an outpatient clinic associated with such hospital, including any period of recuperation or observation immediately following such medical treatment; and

(B) By a person that does not furnish lodging or related services to the general public.

(b) Purchases for resale. Purchases of tangible personal property for resale without intervening use are not subject to retail sales tax. Persons purchasing tangible personal property for resale must furnish a reseller permit to the seller to document the wholesale nature of the sale. Reseller permits replaced resale certificates effective January 1, 2010. Even though resale certificates are no longer used, they must be kept on file by the seller for five years from the date of last use or December 31, 2014. For additional information on reseller permits see WAC 458-20-102.

(c) Sales of medical supplies, chemicals, or materials to a comprehensive cancer center. Sales of medical supplies, chemicals, or materials to a comprehensive cancer center are exempt from retail sales and use tax. RCW 82.08.808 and 82.12.808. This exemption does not apply to sales of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(i) Medical supplies. For purposes of this exemption, "medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a comprehensive cancer center for the purpose of performing research on, procuring, testing,

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processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(A) Provide preparatory treatment of blood, bone, or tissue;

(B) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(C) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(ii) **Chemicals.** For purposes of this exemption, "chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(iii) **Materials.** For purposes of this exemption, "materials" means any item of tangible personal property, including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(iv) **Research.** For purposes of this exemption, "research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

(11) **Buyer's responsibility to remit deferred sales or use tax.**

If the seller does not collect retail sales tax on a retail

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sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless the purchases are specifically exempt by law. For detailed information regarding the use tax, refer to WAC 458-20-178.

(a) **How do I report deferred sales or use tax.** Persons registered with the department and required to file tax returns should report deferred sales or use tax on their excise tax return. As the excise tax return does not have a separate line for reporting deferred sales tax, the buyer should report the tax liability on the use tax line. If a deferred sales tax or use tax liability is incurred by a person who is not required to be registered with the department, the person must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department.

(b) **Where can I obtain a Consumer Use Tax Return?** The Consumer Use Tax Return may be obtained from the department's web site at dor.wa.gov, or by calling the department's telephone information center at 1-800-647-7706.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), chapters 82.04, 82.08, 82.12 and 82.32 RCW. 10-06-069, § 458-20-168, filed 2/25/10, effective 3/28/10. Statutory Authority: RCW 82.32.300 and 82.01.060(2). 08-16-057, § 458-20-168, filed 7/30/08, effective 8/30/08; 05-14-090, § 458-20-168, filed 6/30/05, effective 7/31/05. Statutory Authority: RCW 82.32.300 and 82.04.260(15). 94-11-097, § 458-20-168, filed 5/17/94, WAC (~~1/8/141/6/141/3/141/17/12 2:09 PM~~~~2:37 PM~~~~7:13 AM~~~~2:10 PM~~)

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effective 6/17/94. Statutory Authority: RCW 82.32.300. 88-01-050 (Order 87-9), § 458-20-168, filed 12/15/87; 87-05-042 (Order 87-1), § 458-20-168, filed 2/18/87; 83-07-033 (Order ET 83-16), § 458-20-168, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-168, filed 6/27/78; Order ET 74-2, § 458-20-168, filed 6/24/74; Order ET 70-3, § 458-20-168 (Rule 168), filed 5/29/70, effective 7/1/70.]