



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Revenue

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

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

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

Yes No If Yes, explain:

Purpose: WAC 458-20-150 (Rule 150) Optometrists, ophthalmologists, and opticians explains the application of B&O, retail sales, and use taxes for the business activities of optometrists, ophthalmologists, and opticians.

The Department has revised Rule 150 to:

- Delete outdated and past statute information;
- Reorganize the rule by moving definitions currently found throughout the rule to the Introduction subsection (1)(c); and
- Add additional rules to the list of relevant rules, and update titles to currently listed rules.

Citation of existing rules affected by this order:

Repealed:

Amended: WAC 458-20-150 Optometrists, ophthalmologists, and opticians

Suspended:

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

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 16-07-051 on March 14, 2016.

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

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available. **An analysis was not prepared.**

Date adopted:

May 27, 2016

NAME

Kevin Dixon

SIGNATURE

TITLE

Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: May 27, 2016

TIME: 1:00 PM

WSR 16-12-069

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

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

The number of sections adopted in order to comply with:

Federal statute:	New	Amended	Repealed
Federal rules or standards:	New	Amended	Repealed
Recently enacted state statutes:	New	Amended	Repealed

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

New	Amended	Repealed
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The number of sections adopted in the agency's own initiative:

New	Amended	1	Repealed
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	Amended	Repealed
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The number of sections adopted using:

Negotiated rule making:	New	Amended	Repealed
Pilot rule making:	New	Amended	Repealed
Other alternative rule making:	New	Amended	Repealed

AMENDATORY SECTION (Amending WSR 10-06-069, filed 2/25/10, effective 3/28/10)

WAC 458-20-150 Optometrists, ophthalmologists, and opticians.

(1) **Introduction.** This ~~((section))~~ rule explains the application of Washington's business and occupation (B&O), retail sales, and use taxes to the business activities of optometrists, ophthalmologists, and opticians. It explains the tax liability resulting from the rendering of professional services and the sale of prescription lenses, frames, and other optical merchandise. It also discusses the retail sales tax exemption for the sale and repair of prescription lenses and frames, and the B&O tax deduction for prescription drugs administered by a medical service provider.

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

(b) **Other rules that may be relevant.** The department of revenue (department) has adopted other ~~((sections))~~ rules dealing with the taxability of various activities relating to the provision of health care. Readers may want to refer to the rules in the following ~~((sections))~~ list for additional information.

~~((a))~~ (i) WAC 458-20-102 Reseller permits;

(ii) WAC 458-20-151 ~~((+))~~Dentists, audiologists, and other health care providers~~((+))~~—Dental laboratories~~((+))~~ and dental technicians~~((+))~~;

~~((b))~~ (iii) WAC 458-20-168 ~~((+))~~Hospitals, nursing homes, ~~((boarding homes))~~ assisted living facilities, adult family homes and similar health care facilities~~((+))~~;

~~((c))~~ (iv) WAC 458-20-178 Use tax and the use of tangible personal property;

~~((v))~~ 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))~~ Medical substances, devices, and supplies for humans—Drugs prescribed for human use—Medically prescribed oxygen—Prosthetic devices—Mobility enhancing equipment—Durable medical equipment.

(c) **Definitions for the purpose of this rule are:**

(i) **Optical merchandise.** "Optical merchandise" includes prescription lenses, frames, springs, temples, cases, and other items or accessories to be worn or used with lenses. It also includes nonprescription lenses or eyeglasses.

(ii) **Prescription lens.** "Prescription lens" means any lens, including contact lens, with power or prism correction for human vision, which has been prescribed in writing by a physician or optometrist. The term includes all ingredients and component parts of the lens itself, including color, scratch resistant or ultraviolet coating, and fashion tints.

(iii) **Professional services.** "Professional services" includes the examination of the human eye, the examination, identification, and treatment of any defects of the human vision system, and the analysis of the process of vision. It includes the use of any diagnostic instruments or devices for the measurement of the powers or range of vision, or the determination of the refractive powers of the eye or its

functions. It does not include the preparation or dispensing of lenses or eyeglasses.

(2) **Taxability of professional services.** Optometrists and ophthalmologists are subject to ~~((the))~~ service and other activities B&O tax on their gross income from providing professional services. ~~((For the purposes of this section, "professional services" include the examination of the human eye, the examination, identification, and treatment of any defects of the human vision system, and the analysis of the process of vision. It includes the use of any diagnostic instruments or devices for the measurement of the powers or range of vision, or the determination of the refractive powers of the eye or its functions. It does not include the preparation or dispensing of lenses or eyeglasses.))~~

(3) **Purchases and sales of optical merchandise by optometrists, ophthalmologists, and opticians.** Purchases of optical merchandise by optometrists, ophthalmologists, and opticians for resale without intervening use as a consumer are not subject to ~~((the))~~ retail sales tax. Thus, optometrists, ophthalmologists, and opticians are not required to pay retail sales or use tax on items which will be given to customers as part of a sale of eyeglasses or contact lenses, such as cleaning supplies, carrying cases, and the like. The department considers these items to be sold along with the eyeglasses or contact lenses. An optometrist, ophthalmologist, or optician 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))~~ WAC 458-20-102.

Sales of optical merchandise to consumers are subject to retailing B&O tax. ~~((In addition,))~~ The seller must collect retail sales tax unless the sale is specifically exempt by law. ~~((For the purposes of this section, "optical merchandise" includes prescription lenses, frames, springs, temples, cases, and other items or accessories to be worn or used with lenses. It also includes nonprescription lenses or eyeglasses.~~

For purposes of this section, "prescription lens" means any lens, including contact lens, with power or prism correction for human vision, which has been prescribed in writing by a physician or optometrist. The term "prescription lens" includes all ingredients and component parts of the lens itself, including color, scratch resistant or ultraviolet coating, and fashion tints.))

(a) **Are sales of prescription lenses and frames ~~((exempt from))~~ subject to retail sales tax?** ~~((As a result of legislation to implement the national Streamlined Sales and Use Tax Agreement, effective July 1, 2004))~~ No, sales of prescription lenses and frames for prescription lenses are exempt from retail sales tax as prosthetic devices under RCW 82.08.0283.

~~((Before July 1, 2004, sales of prescription lenses were exempt from retail sales tax under RCW 82.08.0281 if the lenses were dispensed by an optician licensed under chapter 18.34 RCW or by a physician or optometrist under a prescription written by a physician or optometrist. Sales of frames for prescription lenses did not qualify for a sales tax exemption. Thus, before July 1, 2004, when prescription~~

~~lenses were sold with frames, only the prescription lenses were exempt from sales tax.))~~

(b) **Are repairs of prescription lenses and frames subject to retail sales tax?** ~~((Beginning July 1, 2004))~~ No, charges for the repair of prescription lenses or to prescription eyeglass frames, whether the frames are the original frames or replacement frames, are exempt from retail sales tax as labor and services rendered in respect to prosthetic devices under RCW 82.08.0283. ~~((Before July 1, 2004, charges for the repair of prescription lenses were exempt from retail sales tax. Charges for the repair of frames, however, were subject to retail sales tax.))~~

(c) **Segregation of income from different sources.** To claim a retail sales tax exemption under RCW 82.08.0281 or 82.08.0283, persons providing or selling any combination of professional services, prescription lenses, prescription eyeglass frames, or other optical merchandise must segregate and separately account for the income derived from each source.

(d) **Examples.** ~~((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.))~~

(i) **Example 1.** Taxpayer is an optometrist who performs eye examinations and sells prescription eyeglasses, contact lenses, and other optical merchandise. All sales of prescription lenses are made under written prescription. Income attributable to the eye examinations, the sale of prescription lenses, and the sale of other optical merchandise is segregated in Taxpayer's books of account.

The income derived from the eye examinations is subject to service and other activities B&O tax. The gross proceeds of sales of the prescription lenses, eyeglass frames with prescription lenses, contact lenses, and other optical merchandise are subject to retailing B&O tax. The sales of prescription lenses, eyeglass frames with prescription lenses, including contact lenses, are exempt from retail sales tax. ~~((Beginning July 1, 2004, sales of eyeglass frames with prescription lenses are exempt from retail sales tax.))~~ Taxpayer ~~((, however,))~~ must collect retail sales tax on sales of other optical merchandise ~~((including eyeglass frames sold with prescription lenses before July 1, 2004,))~~ and remit the tax to the department.

(ii) **Example 2.** Taxpayer is a retail drugstore that sells preassembled "off-the-shelf" reading glasses. These eyeglasses have lenses with power or prism correction and are sold without a prescription. In addition, Taxpayer sells magnifiers, binoculars, monoculars, and sunglasses. These items are also sold without a prescription.

The gross proceeds of sales of these items are subject to retailing B&O tax. In addition, Taxpayer must collect retail sales tax on sales of these items and remit the tax to the department. Because these items are not sold under a prescription, nor are they prescribed, fitted, or furnished for the buyer by a person licensed under the laws of this state to prescribe, fit, or furnish prosthetic devices, they are not exempt from retail sales tax under either RCW 82.08.0281 or 82.08.0283.

(4) **Equipment and supplies used by optometrists, ophthalmologists, and opticians.** Purchases of equipment and supplies used by optometrists, ophthalmologists, and opticians are purchases at retail and are subject to retail sales tax unless specifically exempt by law. If the seller does not collect retail sales tax, the optometrist, ophthalmologist, or optician 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. Deferred sales or use tax (~~should be reported on the buyer's 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. For detailed information about use tax, refer to WAC 458-20-178 (~~(Use tax)~~).

(a) **Prescription drugs.** "Prescription drugs," as defined in RCW 82.08.0281, may be purchased without payment of retail sales or use tax by optometrists and ophthalmologists if all requirements for the exemption are met. For additional information regarding prescription drugs, refer to WAC 458-20-18801.

(b) **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(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 purposes 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. RCW 82.04.620.

(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 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) **Samples.** Optometrists, ophthalmologists, and opticians are required to pay use tax on any samples, with the exception of prescription drug samples, that they acquire unless retail sales or use tax has been previously paid on these samples.

(d) **Examples.** (~~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.~~)

(i) **Example 3.** Taxpayer is an ophthalmologist who performs eye examinations, laser surgery, and cataract surgery. Taxpayer purchases equipment and supplies that are used in performing these services such as surgical instruments, eye shields, cotton swabs, sterile dressings, bandages, and gauze. Taxpayer also (~~purchased~~) purchases a computer, technical publications, and magazines by mail order and over the internet.

Taxpayer is subject to retail sales tax on these purchases. If the seller does not collect sales tax, Taxpayer is liable for deferred sales tax or use tax and must remit the tax directly to the department.

(ii) **Example 4.** Taxpayer is an optometrist who performs eye examinations and sells prescription eyeglasses, contact lenses, and other optical merchandise. Taxpayer purchases nonprescription saline and cleaning solutions for contact lenses and carrying cases for eyeglasses and contact lenses. The saline and cleaning solutions are consumed when Taxpayer performs eye examinations. The eyeglass and contact lens carrying cases are provided to customers at the time they purchase eyeglasses or contact lenses.

The purchases of the eyeglass and contact lens carrying cases are purchases for resale and are ~~((, therefore,))~~ not subject to sales tax if Taxpayer provides the seller with a ~~((resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or a))~~ reseller permit ~~((WAC 458-20-102) for sales made on or after January 1, 2010))~~. The purchases of the saline and cleaning solutions are ~~((, however,))~~ subject to ~~((the))~~ retail sales tax. These solutions are consumed while providing professional services and cannot be considered to be purchased for resale. They also do not qualify for a sales tax exemption under RCW 82.08.0281 as prescription drugs. If retail sales tax was not paid on the saline and cleaning solutions at the time of purchase, Taxpayer must remit deferred sales tax or use tax directly to the department.