



# City Council Agenda Bill

20053
Bill Number

**Subject:** Work session on applications of business & occupation tax on medical providers.

**Summary Statement:** Bellingham Municipal Code 6.04.090, provides an exemption for religious medical and health related organizations from Business & Occupation taxes. Staff will present additional information on the topic as well as options for City Council consideration.

**Previous Council Action:** July 15, 2013 and August 12, 2013 committee briefing

**Fiscal Impact:** Attached memo includes likely outcomes for each option.

**Funding Source:** General Fund

**Attachments:** Finance & Legal staff memorandum  
 Appendix A RCW 82.04.431 - "Health or social welfare organization" defined  
 Appendix B WAC 458-20-168(3) Hospitals, nursing homes, boarding homes, adult family homes, and similar health care facilities.

Meeting Activity	Meeting Date	Staff Recommendation	Presented By	Time
Committee Briefing Council Direction Requested	04-Nov-2013	Provide Direction to Staff	Brian Henshaw Matt Stamps	:15

**Council Committee:**

Finance and Personnel  
 Michael Lilliquist, Chair  
 Gene Knutson; Stan Snapp

**Committee Actions:**

**Agenda Bill Contact:**

Brian Henshaw

Reviewed By	Initials	Date
Brian Henshaw, Finance	BH	10/29/13
Matt Stamps, Legal	MS	10/29/13
Legal	PMK	10.29.13
Mayor	KL	10.29.13

**Council Action:**



## City of Bellingham

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**DATE:** OCTOBER 23, 2013  
**TO:** CITY COUNCIL & MAYOR LINVILLE  
**SUBJECT:** B&O TAX EXEMPTION FOR RELIGIOUS HEALTH CARE PROVIDERS

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### I. INTRODUCTION

At its August 12, 2013 meeting, City Council discussed various options for addressing the exemption from business and occupation ("B&O") tax currently provided to religious health care providers under the Bellingham Municipal Code ("BMC"). This memorandum addresses several questions posed by City Council and refines and expands upon the options discussed.

### II. EXECUTIVE SUMMARY

The policy objective supporting the religious provider exemption is unclear. This memorandum explores the potential for repealing the religious provider exemption and replacing it with a tax preference for specific healthcare services that further an identifiable public-policy objective.

One option is to repeal the religious provider exemption and replace it with an exemption for healthcare providers who are required by law to provide charity care. Charity care laws require hospitals and federally-qualified health centers to provide healthcare services for free or at a reduced rate to individuals with a family income at or below 200% of the federal poverty level. Uncompensated charity care generates no revenue and, therefore, no B&O tax. Consequently, the real impact of option 1 is that it would allow charity-care providers to avoid B&O tax on income derived from services for which payment is expected and received. For reporting purposes, charity care providers report charity care as income that is then written off. In 2010, PeaceHealth St. Joseph Medical Center reported charity care charges to the Department of Health amounting to 2.21% of the hospital's total revenue and 5.89% of its adjusted revenue (excluding Medicare and Medicaid). This statistic provides cause to consider whether an exemption of *all* revenues earned by charity-care providers is disproportionate to the community benefit derived from charity care.

A second option is to adopt some or all of the healthcare-specific tax preferences available under the state B&O tax code. A significant preference offered by the state is a deduction for nonprofit "health and social welfare organizations" as defined in state law under RCW 82.04.431 (including qualifying non-profit hospitals and community health centers) for amounts received under health service programs

paid for by the federal or state government. The deduction includes amounts received for services covered by Medicare, Medicaid, and other state health care programs under RCW 74.09 (Children's Health and other programs) and RCW 70.47 (Washington State Basic Health Plan). The Legislature stated the public policy objective for this deduction was to not tax amounts paid to public or nonprofit hospitals under a government-subsidized health care program for the care of the elderly, low income, or disabled people, as providing health care for such persons is a recognized, necessary, and vital government function.

If neither of the preceding options strike the right balance, a third option is to adopt a separate set of deductions that allow certain similarly-situated healthcare providers (e.g., non-profits) to avoid B&O tax on all but a select set of services for which B&O tax is deemed appropriate. The financial impacts of this option may be further fine-tuned by adopting a higher or lower B&O tax rate for the services selected for taxation. This option provides additional flexibility but would be more challenging to establish and administer. In essence, this third option is a place holder for an alternative healthcare tax preference that would need to be further developed and refined based upon additional policy direction from Council.

### III. BACKGROUND

#### A. B&O Tax Overview

*Percentage Tax on Gross Receipts.* B&O taxes are levied at a percentage rate on the gross receipts of the business. Businesses are put in different classes such as extracting, manufacturing, wholesaling, retailing, and services. Within each class the rate must be the same but it may differ among classes.

*Imposed by City and State.* The City imposes its B&O tax through BMC 6.04. This tax is in addition to B&O tax imposed by the state through Revised Code of Washington ("RCW") 82.04. The City's B&O tax code is relatively simple compared to the State's. The City has only five classifications and two rates: extracting, manufacturing, wholesaling, and retailing are taxed at the rate of .17%; services and other activities are taxed at the rate of .44%. The state has many more classifications and rates.

*Deductions and Exemptions.* Both the city and the state provide numerous deductions and exemptions within their B&O tax codes. Deductions and exemptions reduce a business's taxable income, as opposed to a tax credit which reduces its tax bill. Neither the city nor the state provide a general tax exemption to non-profit entities.

#### B. B&O Tax & Health Care

*City B&O Tax.* Health care providers are subject to City B&O tax at the "services and other activities" rate of .44%, with one notable exception—non-profit health care providers *with a religious affiliation* are altogether exempt from paying City B&O tax. BMC 6.04.090(G)(2) exempts:

The gross income received by any religious society, religious association or religious corporation, through the operation of any hospital, clinic, resort or other institution devoted exclusively to the care of healing of human beings; provided, that no exemption is granted where the income therefor inures to the benefit of any physician, surgeon,

stockholder, or individual by the virtue of ownership or control of such hospital, clinic, resort, or other institution.

The religious provider exemption was included in the original B&O tax code adopted by the City in 1955. The adopting ordinance and meeting minutes provide no insight into the original intent of the exemption.

**State B&O Tax.** Unlike the City, the state does not exempt religious health care providers from B&O tax. Religious providers are taxed along with other health care providers at the rate of 1.5%. The state does, however, allow numerous deductions, credits and exemptions specific to medical and other health care facilities, including a deduction for Medicare and Medicaid reimbursements.

***Jurisdictional Comparison.***

	State	Bellingham
Non-Profit Health Care Providers	1.5%	.44%
Non-Profit Health Care Providers <i>with a Religious Affiliation</i>	1.5%	Exempt

**C. Charity Care**

Charity care was a significant topic of discussion at the August 12, 2013 City Council meeting. Strictly speaking, "charity care" is a creature of state law applicable only to hospitals. However, analogous requirements are imposed by federal law on federally-qualified health centers. Charity care and its interplay with B&O tax is discussed below.

**Washington Hospitals.** The 1989 Legislature enacted RCW 70.170, which requires Washington hospitals to provide "charity care." Charity care is defined as "necessary hospital health care rendered to indigent persons, to the extent that the persons are unable to pay for the care or to pay deductibles or co-insurance amounts required by a third-party payer." RCW 70.170.020(4). "Indigent persons" means those patients who have exhausted any third-party coverage, including Medicare and Medicaid, and whose family income is at or below 200% of the federal poverty level. WAC 246-453-040. "Hospital" is defined in RCW 70.41.020(4) and is limited to institutions that provide 24-hour medical care.

There are two main components to charity care: *First*, Washington hospitals are prohibited from:

- Denying access to emergency care based on ability to pay. RCW 70.170.060(2).
- Adopting or maintaining admission policies which result in a significant reduction in the proportion of patients who are unable to pay for hospital services. RCW 70.170.060(1).

*Second*, hospitals are required to subsidize charity care at the following levels:

- Persons with a family income at or below 100% of the poverty level qualify for a full discount of all hospital charges. WAC 246-453-040(1).
- Persons with a family income between 100% and 200% of the federal poverty level qualify for partial discounts from charges in accordance with a sliding fee schedule promulgated by the hospital and approved by the Washington State Department of Health ("DOH"). WAC 246-453-040(2).

Hospitals report charity care as billed charges that are then written off. DOH reports that statewide hospital charity care charges for fiscal year 2010 amounted to 2.62% of total revenue and 5.45% of

adjusted revenue (Medicare and Medicaid taken out). According to the same report, PeaceHealth St. Joseph Medical Center reported charity care charges amounting to 2.21% of total revenue and 5.89% of adjusted revenue (Medicare and Medicaid taken out).

***Federally-Qualified Health Centers.*** Under federal law, entities known as "federally qualified health centers" are subject to similar requirements to care for the indigent, although the term "charity care" is not used. Federally-qualified health centers are defined as non-profit, private or public entities that serve medically underserved areas or populations, including migratory and seasonal agricultural workers, the homeless, and residents of public housing. Public Health Service Act, 42 USC § 254b(a). There are currently two federally qualified health centers in Bellingham: Interfaith Community Health Center ("Interfaith") and SeaMar Community Health Clinics ("SeaMar").

Under federal law, federally-qualified health centers must:

- Assure that no patient will be denied health care services due to an individual's inability to pay for such services, and assure that any fees or payments required for such services will be reduced or waived as necessary to fulfill this assurance. 42 USC § 254b(k)(3)(G).
- Adopt a fee schedule that provides a full discount to individuals and families at or below 100% of the federal poverty level. For those with incomes between 100% and 200% of the federal poverty level, fees must be charged in accordance with a sliding discount policy based on family size and income. 42 CFR Part 51c.303(f).

For ease of reference, the legal requirements applicable to Washington hospitals and federally-qualified health centers with regard to the provision of health care services to patients regardless of their ability to pay (as outlined above) may be referred to collectively hereinafter as "charity care."

***Uncompensated Charity Care Generates No Income and, therefore, No B&O Tax.*** Charity care requirements result in the provision of medical services for free or at reduced fees based on the financial need of the patient. The discounted portion of the service generates no income and, therefore, no B&O tax. The same is true of other forms of uncompensated care, including unreimbursed Medicaid and bad debt. The term "unreimbursed Medicaid" refers to the difference between the rates that the service would normally be billed out at versus the approved Medicaid reimbursement level. B&O tax does not apply to uncompensated Medicaid because, as with charity care, payment is neither expected nor received. (Medicaid prohibits health care providers from "balance billing" patients for the difference between billed charges and Medicaid reimbursement levels.) "Bad debt" refers to uncollectable amounts resulting from patients' or third-party payers' unexcused failure to pay for services rendered. The tax treatment of bad debt is more complicated, but ultimately results in no income and, therefore, no B&O tax.<sup>1</sup> In sum, uncompensated care generates no income and, therefore, no B&O tax.

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<sup>1</sup> The treatment of bad debt depends on whether the business keeps its books on a cash basis or an accrual basis. If a business keeps its books on a cash basis, no B&O tax is paid on bad debt because no cash is received. If a business keeps its books on an accrual basis (where income is recognized at the time service is rendered), then bad debt may be subtracted from taxable income during the reporting period in which the bad debt is written off. In this way, no B&O tax is ultimately paid on bad debt.

#### IV. DISCUSSION

This section discusses three policy options for repealing the B&O tax exemption for religious healthcare providers and replacing it with an exemption or set of deductions tied to specific health care services.

##### **OPTION 1. Repeal the Religious Provider Exemption and Replace it with an Exemption for Entities who are Required by Law to Provide Charity Care**

Under this option, government mandated charity-care providers (i.e., hospitals and federally-qualified health centers) would be exempt from B&O tax. As discussed above, charity-care providers already pay no B&O tax on uncompensated charity care because, by definition, uncompensated charity-care generates no revenue against which the tax could apply. Consequently, the real impact of option 1 is that it would allow charity-care providers to avoid B&O tax on income derived from services for which payment is expected and received.

##### Impacts:

- Equity among charity-care providers.
- Inequity with other healthcare providers (competitive disadvantage).
- Likely reduction in B&O tax revenue.

##### Policy considerations:

- Whether the exemption is disproportionate to the community benefit derived from charity care.
- Whether the exemption should be expanded to all non-profit health and social welfare organizations as defined in state law under RCW 82.04.431, attached hereto as *Appendix A*.

##### **OPTION 2. Repeal the Religious Provider Exemption and Adopt Deductions Specific to Medical and Other Health Care Facilities under the State B&O Tax Code**

Under this option, the City would incorporate by reference all state B&O tax deductions, credits and exemptions specific to medical and other health care facilities under state law. Deductions, credits and exemptions specific to medical and other health care facilities under state law are compiled in WAC 458-20-168(3), a copy of which is attached hereto as Appendix B. The City's B&O tax rate of .44% (rather than the State's rate) would apply to any taxable revenue.

As noted above, a significant tax preference offered by the state is a deduction for nonprofit health and social welfare organizations as defined in state law under RCW 82.04.431 (including non-profit hospitals and federally-qualified community health centers) for amounts received under health service programs paid for by the federal or state government. This deduction is codified in RCW 82.04.4297 and 82.04.4311 and includes amounts received by health and social welfare organizations for services covered by Medicare, Medicaid, and other state health care programs under RCW 74.09 (Children's Health and other programs) and RCW 70.47 (Washington State Basic Health Plan). *See also* WAC 458-20-168(3)(e), (f). The Legislature stated the public policy objective for this deduction as follows:

The legislature finds that the provision of health services to those people who receive federal or state subsidized health care benefits by reason of age, disability, or lack of

income is a **recognized, necessary, and vital governmental function. As a result, the legislature finds that it would be inconsistent with that governmental function to tax amounts received by a public hospital or nonprofit hospital qualifying as a health and social welfare organization, when the amounts are paid under a health service program subsidized by federal or state government.** Further, the tax status of these amounts should not depend on whether the amounts are received directly from the qualifying program or through a managed health care organization under contract to manage benefits for a qualifying program. Therefore, the legislature adopts this act to provide a clear and understandable deduction for these amounts, and to provide refunds for taxes paid as specified in section 4 of this act."

Additional health-care specific deductions available under the State B&O tax code are summarized below:

- Amounts received by organ procurement organizations and blood and tissue banks are exempt to the extent that the amounts are exempt from federal income tax. WAC 458-20-168(3)(a), (g).
- Adult family homes licensed by DSHS, or exempted from licensing requirements by DSHS, are exempt from B&O tax. WAC 458-20-168(3)(c).
- Boarding homes may deduct amounts received as compensation for providing adult residential care, enhanced adult residential care, or assisted living services under contract with DSHS. In addition, non-profit boarding homes may deduct amounts received for providing room and domiciliary care. WAC 458-20-168(3)(h).
- Amounts received from comprehensive cancer centers are exempt to the extent that the amounts are also exempt from federal income tax. WAC 458-20-168(3)(i).
- Hospitals may credit against B&O tax the cost of purchasing mechanical lifting devices and other equipment used to minimize patient handling. WAC 458-20-168(3)(j).

State law contains no exemption for charity care.

Impacts:

- Provides equity among health care providers by applying a uniform rate and neutral tax-preference criteria.
- Provides targeted tax breaks for certain services selected by the state for preferential treatment based upon identifiable policy objectives.
- Likely increase in B&O tax revenue.
- Administrative efficiency.

### **OPTION 3. Repeal Religious Provider Exemption and Replace with New Set of Deductions and/or New Tax Rate**

If neither of the preceding options strike the right balance, a third option is to adopt a separate set of deductions that allow certain similarly-situated health care providers (e.g., non-profits) to avoid B&O tax on all but a select set of services for which B&O tax is deemed appropriate. The financial impacts of this option may be further fine-tuned by adopting a higher or lower B&O tax rate for the services selected for taxation. This option provides additional flexibility but would be more difficult to establish

and administer. In essence, this third option is a place holder for an alternative healthcare tax preference that would need to be further developed and refined based upon additional policy direction from Council.

Policy considerations:

- Difficult to establish, involves high level of subjectivity.
- Difficult to administer, both for the City and its tax payers.
- Impact on B&O tax revenue and equity among providers depends upon the services selected for taxation and the tax rates imposed upon those services.



## APPENDIX A

### **RCW 82.04.431**

#### **"HEALTH OR SOCIAL WELFARE ORGANIZATION" DEFINED — CONDITIONS FOR EXEMPTION — "HEALTH OR SOCIAL WELFARE SERVICES" DEFINED.**

(1) **The term "health or social welfare organization" means** an organization, including any community action council, which renders health or social welfare services as defined in subsection (2) of this section, which is a domestic or foreign not-for-profit corporation under chapter 24.03 RCW and which is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or which is a corporation sole under chapter 24.12 RCW. Health or social welfare organization does not include a corporation providing professional services as authorized in chapter 18.100 RCW. In addition a corporation in order to be exempt under RCW 82.04.4297 must satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the public service of the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

(d) The corporation must be duly licensed or certified where licensing or certification is required by law or regulation;

(e) The amounts received qualifying for exemption must be used for the activities for which the exemption is granted;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The director of revenue must have access to its books in order to determine whether the corporation is exempt from taxes within the intent of RCW 82.04.4297 and this section.

**(2) The term "health or social welfare services" includes and is limited to:**

(a) Mental health, drug, or alcoholism counseling or treatment;

(b) Family counseling;

(c) Health care services;

(d) Therapeutic, diagnostic, rehabilitative, or restorative services for the care of the sick, aged, or physically, developmentally, or emotionally-disabled individuals;

(e) Activities which are for the purpose of preventing or ameliorating juvenile delinquency or child abuse, including recreational activities for those purposes;

(f) Care of orphans or foster children;

(g) Day care of children;

(h) Employment development, training, and placement;

(i) Legal services to the indigent;

(j) Weatherization assistance or minor home repair for low-income homeowners or renters;

(k) Assistance to low-income homeowners and renters to offset the cost of home heating energy, through direct benefits to eligible households or to fuel vendors on behalf of eligible households;

(l) Community services to low-income individuals, families, and groups, which are designed to have

a measurable and potentially major impact on causes of poverty in communities of the state; and

(m) Temporary medical housing, as defined in RCW 82.08.997, if the housing is provided only:

(i) 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

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

## APPENDIX B

### **WAC 458-20-168(3)**

#### **HOSPITALS, NURSING HOMES, BOARDING HOMES, ADULT FAMILY HOMES AND SIMILAR HEALTH CARE FACILITIES.**

**(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 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 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 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 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 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 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 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, 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 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.**

(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 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 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 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.