

RCW 82.04.360 Exemptions—Employees—Independent contractors—

Booth renters. (1) This chapter does not apply to any person in respect to his or her employment in the capacity of an employee or servant as distinguished from that of an independent contractor. For the purposes of this section, the definition of employee includes those persons that are defined in section 3121(d)(3)(B) of the federal internal revenue code of 1986, as amended through January 1, 1991.

(2) Until July 1, 2010, this chapter does not apply to amounts received by an individual from a corporation as compensation for serving as a member of that corporation's board of directors. Beginning on July 1, 2010, such amounts are taxable under RCW 82.04.290(2).

(3) A booth renter is an independent contractor for purposes of this chapter. For purposes of this section, "booth renter" means any person who:

(a) Performs cosmetology, barbering, esthetics, or manicuring services for which a license is required under chapter 18.16 RCW; and

(b) Pays a fee for the use of salon or shop facilities and receives no compensation or other consideration from the owner of the salon or shop for the services performed. [2010 1st sp.s. c 23 § 702; 2010 c 106 § 207. Prior: 1991 c 324 § 19; 1991 c 275 § 2; 1961 c 15 § 82.04.360; prior: 1959 c 197 § 20; prior: 1945 c 249, § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

Application—Refunds—2010 1st sp.s. c 23 §§ 702 and 1704: "In accordance with Article VIII, section 5 of the state Constitution, sections 702 and 1704 of this act do not authorize refunds of business and occupation tax validly collected before July 1, 2010, on amounts received by an individual from a corporation as compensation for serving as a member of that corporation's board of directors." [2010 1st sp.s. c 23 § 1705.]

Intent—Findings—2010 1st sp.s. c 23: "(1) In adopting the state's business and occupation tax, the legislature intended to tax virtually all business activities carried on within the state. See *Simpson Inv. Co. v. Dep't of Revenue*, 141 Wn.2d 139, 149 (2000). The legislature recognizes that the business and occupation tax applies to all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly, unless a specific exemption applies.

(2) One of the major business and occupation tax exemptions is provided in RCW 82.04.360 for income earned as an employee or servant as distinguished from income earned as an independent contractor. The legislature's intent in providing this exemption was to exempt employee wages from the business and occupation tax but not to exempt income earned as an independent contractor.

(3) The legislature finds that corporate directors are not employees or servants of the corporation whose board they serve on and therefore are not entitled to a business and occupation tax exemption under RCW 82.04.360. The legislature further finds that there are no business and occupation tax exemptions for compensation received for serving as a member of a corporation's board of directors.

(4) The legislature also finds that there is a widespread misunderstanding among corporate directors that the business and

occupation tax does not apply to the compensation they receive for serving as a director of a corporation. It is the legislature's expectation that the department of revenue will take appropriate measures to ensure that corporate directors understand and comply with their business and occupation tax obligations with respect to their director compensation. However, because of the widespread misunderstanding by corporate directors of their liability for business and occupation tax on director compensation, the legislature finds that it is appropriate in this unique situation to provide limited relief against the retroactive assessment of business and occupation taxes on corporate director compensation.

(5) The legislature also reaffirms its intent that all income of all independent contractors is subject to business and occupation tax unless specifically exempt under the Constitution or laws of this state or the United States." [2010 1st sp.s. c 23 § 701.]

Effective date—2010 1st sp.s. c 23 §§ 107, 601, 602, 702, 902, 1202, and 1401-1405: See note following RCW 82.04.2907.

Retroactive application—2010 1st sp.s. c 23 §§ 402 and 702: See note following RCW 82.04.423.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Effective date—2010 c 106: See note following RCW 35.102.145.

Finding—Intent—1991 c 275: "(1) The legislature finds:

(a) The existing state policy is to exempt employees from the business and occupation tax.

(b) It has been difficult to distinguish, for business and occupation tax purposes, between independent contractors and employees who are in the business of selling life insurance. The tests commonly used by the department of revenue to determine tax status have not successfully differentiated employees from independent contractors when applied to the life insurance industry.

(2) The intent of this act is to apply federal tax law and rules to distinguish between employees and independent contractors for business and occupation tax purposes, solely for the unique business of selling life insurance." [1991 c 275 § 1.]

Effective date—1991 c 275: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 275 § 3.]