

Rental vs. license to use real estate

Leases or rentals of real estate are not subject to business and occupation (B&O) tax or retail sales tax. However, income earned from providing a license to use real property is subject to B&O tax and may be subject to retail sales tax.

Rental or lease

A rental or lease of real estate conveys an interest in a designated area of real property. For an activity to be an exempt rental of real estate, all five elements must be present:

- There must be a landlord/tenant relationship.
- The lessee must have exclusive use of the rented space.
- The rental period must be one complete month or 30 days, or longer.
- The lessee must have the exclusive right of continuous possession.
- The lessee must have dominion and control of the rented space.

License to use

A license to use real estate merely grants a right to use the real property. It does not give exclusive dominion or control over the property. Under a license to use real estate, the owner typically controls such things as lighting, heating, cleaning, repairing, and opening and closing the premises. A license to use real estate can include all or part of the property.

Licenses to use real property are generally subject to B&O tax under the service and other activities classification. There are exceptions for lodging and automobile parking as described below.

Sales of lodging by a hotel, rooming house, motel, trailer camp, and similar licenses to use real estate are subject to retailing B&O and retail sales tax. However, if the agreement provides for occupancy of the real property for a continuous period of one complete month or 30 consecutive days or more, it is presumed to be a nontaxable lease or rental of real estate.

However, banquet/meeting facilities provided by a lodging business (hotel, motel, etc.) are subject to sales tax.

Charges by automobile parking and storage garage businesses are also subject to retailing B&O and retail sales tax. However, exclusive use of a designated parking space for a continuous period of one month, or 30 consecutive days or more, is considered a nontaxable lease or rental of real estate.

Example: Owners of coin-operated machines sometimes place their machines in businesses owned by others. In exchange, the business owner is typically entitled to a share of the machine's receipts. This arrangement constitutes a license to use real property and the income received by the business owner is subject to B&O tax under the service and other activities classification.

Example: A barber or beautician might use a portion of a barber shop or beauty salon, typically a chair or booth rental, owned by another. This arrangement is a license to use real property because the barber or beautician does not have exclusive possession and control of the property. The income earned from the chair or booth rental is subject to B&O tax under the service and other activities classification.

Example: A lawyer might use an office in a building owned by another.

- If the lawyer is renting an office space for 30 days, has exclusive possession and control of the office, has their own separate entrance, and is not dependent on the landlord to access the office, it is rental of real estate and exempt from tax.
- If the lawyer is co-sharing an office space where they do not have exclusive possession or control of the office, it is considered a license to use real estate and subject to service and other activities B&O tax.

References

RCW 82.04.050 – Sale at retail, retail sale

RCW 82.04.290 – Tax on service and other activities

WAC 458-20-118 – Sale or rental of real estate, license to use real estate

WAC 458-20-166 – Hotels, motels, boarding houses, rooming houses, resorts, hostels, trailer camps, short-term rentals and similar lodging businesses



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