

(6) No public record will be marked or damaged in any way during inspection or copying.

(7) Within five business days of receiving a request for public records, the board will respond by either:

(a) Providing the records;

(b) Acknowledging in writing that the board has received the request and providing a reasonable estimate of the time the board will need to respond to the request; or

(c) Denying the request.

[Statutory Authority: [RCW 82.03.170.] 99-13-098, § 456-12-095, filed 6/15/99, effective 7/16/99.]

WAC 456-12-100 Repealed. See Disposition Table at beginning of this chapter.

WAC 456-12-105 Denying requests for public records. (1) The board may determine that a requested public record is exempt under chapter 42.17 RCW or other law and may not be inspected or copied.

(2) All denials of a request for public records will contain a written statement from the executive director stating the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

(3) The board may remove identifying details when it makes available or publishes any public record when there is reason to believe that revealing such details would be an invasion of personal privacy protected by chapter 42.17 RCW.

[Statutory Authority: [RCW 82.03.170.] 99-13-098, § 456-12-105, filed 6/15/99, effective 7/16/99.]

WAC 456-12-110 Repealed. See Disposition Table at beginning of this chapter.

WAC 456-12-115 Reviewing denials of requests for public records. (1) Any person objecting to a denial of a request for public records may submit a written request for review to the board.

(2) Upon receiving the written request for review, the executive director will call a meeting of the board to review the denial.

(3) The board will issue a written decision within two business days of receiving the request for review.

(4) The board's written decision regarding the request for review will be the final action by the agency.

[Statutory Authority: [RCW 82.03.170.] 99-13-098, § 456-12-115, filed 6/15/99, effective 7/16/99.]

WAC 456-12-120 Repealed. See Disposition Table at beginning of this chapter.

WAC 456-12-130 Repealed. See Disposition Table at beginning of this chapter.

WAC 456-12-140 Repealed. See Disposition Table at beginning of this chapter.

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Title 458 WAC

REVENUE, DEPARTMENT OF

Chapters

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Chapter 458-07 WAC

VALUATION AND REVALUATION OF REAL PROPERTY

WAC	
458-07-010	Valuation and revaluation of real property—Introduction.
458-07-015	Revaluation of real property—Annual counties.
458-07-020	Revaluation of real property—Multiyear counties.
458-07-025	Revaluation of real property—Plan submitted to department of revenue.
458-07-030	True and fair value—Defined—Criteria—Highest and best use—Data from property owner.
458-07-035	Listing of property—Subdivisions and segregation of interests.

WAC 458-07-010 Valuation and revaluation of real property—Introduction. The Washington state Constitution requires that all taxes be uniform upon the same class of property within the territorial limits of the authority levying the tax. In order to comply with this constitutional mandate and ensure that all taxes are uniform, all real property must be valued in a manner consistent with this principle of uniformity. Also, to comply with statutory and case law, the county assessor must value all taxable real property in the county on a regular, systematic, and continuous basis. This valuation may be accomplished on an annual basis for all real property in the county, or it may be accomplished on a multiyear basis with all the real property in the county revalued within a time period of not more than four years. Whether on an annual basis or a multiyear basis, the assessor must adhere to a revaluation plan that will ensure equality and uniformity in the valuation of real property, and must use proper appraisal methods. The administrative rules in this chapter describe and explain the processes to be used by the county assessor in valuing and revaluing real property for purposes of taxation.

[Statutory Authority: RCW 84.08.070. 00-01-043, § 458-07-010, filed 12/7/99, effective 1/7/00.]

WAC 458-07-015 Revaluation of real property—Annual counties. (1) **Appropriate statistical data defined.** In any county where all real property is revalued each year, the assessor must revalue the property at its current true and fair value using appropriate statistical data. For purposes of this chapter, "appropriate statistical data" means the data required to accurately adjust real property values and includes, but is not limited to, data reflecting costs of new construction and real property market trends.

(2) **Comparable sales data.** In gathering appropriate statistical data and determining real property market trends, the assessor must consider current sales data. "Current sales data" means sales of real property that occurred within the past five years of the date of appraisal and may include sales that occur in the assessment year. To the extent feasible, and in accordance with generally accepted appraisal practices, the assessor shall compile the statistical data into categories of comparable properties. Comparability is most often determined by similar use and location and may be based upon the following use classifications:

- (a) Single family residential;
- (b) Residential with from two to four units;
- (c) Residential with more than four units;
- (d) Residential hotels, condominiums;
- (e) Hotels and motels;
- (f) Vacation homes and cabins;
- (g) Retail trade;
- (h) Warehousing;
- (i) Office and professional service;
- (j) Commercial other than listed;
- (k) Manufacturing;
- (l) Agricultural; and
- (m) Other classifications as necessary.

(3) **Appraisal processes.** Appropriate statistical data shall be applied to revalue real property to current true and fair value using one or more of the following processes:

- (a) Multiple or linear regression;
- (b) Sales ratios;
- (c) Physical inspection; or
- (d) Any other appropriate statistical method that is recognized and accepted with respect to the appraisal of real property for purposes of taxation.

(4) **Physical inspection cycles.**

(a) For purposes of this chapter, "physical inspection" means, at a minimum, an exterior observation of the property to determine whether there have been any changes in the physical characteristics that affect value. The property improvement record must be appropriately documented in accordance with the findings of the physical inspection. In a county where all real property is revalued at its current true and fair value each year, using appropriate statistical data, the assessor must physically inspect all real property at least once within a six-year time period.

(b) Physical inspection of all the property in the county shall be accomplished on a proportional basis in cycle, with approximately equal portions of taxable property of the county inspected each year. Physical inspections of properties outside of the areas scheduled for physical inspection under the plan filed with the department (see WAC 458-07-025) may be conducted for purposes of validating sales, rec-

onciling inconsistent valuation results, calibrating statistical models, valuing unique or nonhomogeneous properties, administering appeals or taxpayer reviews, documenting digital images, or for other purposes as necessary to maintain accurate property characteristics and uniform assessment practices. All properties shall be placed on the assessment rolls at current true and fair value as of January 1st of the assessment year.

(c) In any year, when the area of the county being physically inspected is not completed in that year, the portion remaining must be completed before beginning the physical inspection of another area in the succeeding year. All areas of the county must be physically inspected within the cycle established in the revaluation plan filed with the department.

(5) **Change of value notice.** In a county that revalues all real property each year, revaluation notices must be mailed by the assessor to the taxpayer when there is any change in the assessed value of real property, not later than thirty days after an appraisal or adjustment in value.

[Statutory Authority: RCW 84.08.070, 00-01-043, § 458-07-015, filed 12/7/99, effective 1/7/00.]

WAC 458-07-020 Revaluation of real property—Multiyear counties. (1) **Revaluation cycles.** In a county where all real property is not revalued each year, all real property must be physically inspected and revalued at current true and fair market value on a proportional basis within the county each year of a two, three, or four-year cycle. Approximately equal portions of the taxable property of the county must be physically inspected and revalued each year of the cycle. Alternatively, the department may approve a plan whereby the county assessor physically inspects and revalues all real property in the county once every two years.

(2) **Revaluation outside of approved cycle.** In certain circumstances the assessor is authorized to revalue real property using appraisal judgment, outside of the approved revaluation cycle. These revaluations must not be arbitrary or capricious, nor violate the equal protection clauses of the federal and state Constitutions, nor the uniformity clause of the state Constitution. The assessor may disregard the revaluation cycle and change a property valuation, as appropriate, in the following situations:

(a) If requested by a property owner, when a notice of decision pertaining to the value of real property is received under RCW 36.70B.130 (Notice of decision—Distribution; local project review), RCW 90.60.160 (Final permit decision—Notice forwarded to county assessor; environmental permit assistance), chapter 35.22 RCW (First Class Cities), chapter 35.63 RCW (Planning Commissions), chapter 35A.63 RCW (Planning and Zoning in Code Cities), or chapter 36.70 RCW (Planning Enabling Act);

(b) When the owner or person responsible for payment of taxes on any real property petitions the assessor for a reduction in the assessed value in accordance with RCW 84.40.039, within three years of adoption of a restriction by a government entity;

(c) When there has been a "definitive change of land use designation" by an authorized land use authority, and the revaluation is in accordance with RCW 84.48.065;

(d) When a bona fide mistake has been made by the assessor in a prior valuation made within the current valuation cycle. The change in property valuation is not retroactive to the prior year;

(e) When property has been destroyed, in whole or in part, and is entitled to a reduction in value in accordance with chapter 84.70 RCW; or

(f) When property has been subdivided or merged.

(3) **Revaluation areas—Incomplete revaluation.** In any year, when the area of the county being physically inspected and revalued is not completed in that year, the portion remaining must be completed before beginning the physical inspection and revaluation of another area in the succeeding year. For any portion of a revaluation area that was not completed in the year intended, the value of real property in that portion is still determined as of January 1st of the assessment year originally intended, but the new appraised value is placed on the assessment rolls, and is subject to appeal by the taxpayer, in the assessment year the property is actually inspected and revalued. All areas of the county must be physically inspected and revalued within the cycle established in the revaluation plan filed with the department.

(4) **Change of value notice.** In a county that revalues all real property on a multiyear cycle, revaluation notices must be mailed by the assessor to the taxpayer when there is any change in the assessed value of real property, not later than thirty days after an appraisal.

[Statutory Authority: RCW 84.08.070. 00-01-043, § 458-07-020, filed 12/7/99, effective 1/7/00.]

WAC 458-07-025 Revaluation of real property—Plan submitted to department of revenue. (1) **Revaluation plan—When submitted.** The assessor shall submit a proposed revaluation plan to the property tax division of the department of revenue on or before March 1st of the year prior to the first year of any revaluation and/or physical inspection cycle.

(2) **Revaluation plan—Contents.** The proposed revaluation plan must be sufficiently detailed to enable the department to determine whether the assessor will be able to successfully and timely complete the revaluation and/or physical inspection program and must include, but is not limited to, the following:

(a) A comprehensive analysis of the number and types of properties to be appraised each year;

(b) Specific geographical revaluation areas, taxing districts, or parcels included in the plan each year;

(c) A description of appraiser workload each year and the number of personnel required to implement the plan, including the number and duties of staff not directly involved in the appraisal of real property;

(d) The number of additional staff required, if any, and a description of their duties;

(e) Whether the plan anticipates the necessity of using appraisers hired on a contract basis or whether the plan anticipates requesting special assistance from the department of revenue;

(f) The current and anticipated use of and need for equipment, supplies, and space;

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(g) The annual anticipated budget of the assessor's office; and

(h) A statement that all real property will be appraised at one hundred percent of its true and fair value unless specifically provided otherwise by law.

(3) **Revaluation plan—Approval or disapproval.** The department shall review the proposed revaluation plan to determine whether it complies with all lawful requirements and to determine whether it can be successfully and timely completed. The department shall notify the assessor in writing if it disapproves a proposed revaluation plan and shall give the reasons for its disapproval. If the proposed revaluation plan is not approved by the department, the assessor shall, with the assistance of the department of revenue, develop a revaluation plan that will comply with the provisions of chapter 84.41 RCW and this chapter of the Washington Administrative Code.

(4) **Revaluation plan—Progress report—Changes—Satisfactory progress.**

(a) The assessor of each county shall submit a report to the department of revenue not later than October 15th of each year detailing the county's progress in implementing its revaluation and/or physical inspection program. The report must be submitted on forms supplied by the department and must note any additions or corrections to, or deviations from, the plan during the past year.

(b) Any significant or substantial changes to the plan must be submitted to and approved by the department prior to implementation of the changes.

(c) If the department finds that the revaluation and/or physical inspection program in any county is not proceeding in accordance with the county's revaluation plan or that the revaluation and/or physical inspection program is not making satisfactory progress, the department shall notify both the county legislative authority and the assessor of that finding. Within thirty days after receiving the notice, the county legislative authority shall take one of the following actions:

(i) Authorize such expenditures as will enable the assessor to complete the revaluation and/or physical inspection program as directed; or

(ii) Direct the assessor to request special assistance from the department of revenue for aid in effectuating the county's revaluation and/or physical inspection program.

[Statutory Authority: RCW 84.08.070. 00-01-043, § 458-07-025, filed 12/7/99, effective 1/7/00.]

WAC 458-07-030 True and fair value—Defined—Criteria—Highest and best use—Data from property owner. (1) **True and fair value—Defined.** All property must be valued and assessed at one hundred percent of true and fair value unless otherwise provided by law. "True and fair value" means market value and is the amount of money a buyer of property willing but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might in reason be applied.

(2) **True and fair value—Criteria.** In determining true and fair value, the assessor may use the sales (market data) approach, the cost approach, or the income approach, or a

combination of the three approaches to value. The provisions of (b) and (c) of this subsection, the cost and income approaches, respectively, shall be the dominant factors considered in determining true and fair value in cases of property of a complex nature, or property being used under terms of a franchise granted by a public agency, or property being operated as a public utility, or property not having a record of sale within five years and not having a significant number of sales of comparable property in the general area. When the cost or income approach is used, the assessor shall provide the property owner, upon request, with the factors used in arriving at the value determined, subject to any lawful restrictions on the disclosure of confidential or privileged tax information.

(a) **Sales.** Sales of the property being appraised or sales of comparable properties that occurred within five years of January 1st of the assessment year are valid indicators of true and fair value. In valuing property, the following shall be considered:

(i) Any governmental policies or practices, regulations or restrictions in effect at the time of appraisal that affect the use of property, including a comprehensive land use plan, developmental regulations under the Growth Management Act (chapter 36.70A RCW), and zoning ordinances. No appraisal may assume a land usage not permitted under existing zoning or land use planning ordinances or statutes, unless such usage is otherwise allowed by law;

(ii) Physical and environmental influences that affect the use of the property;

(iii) When a sale involves a real estate contract, the extent, if any, to which the down payment, interest rate, or other financing terms may have increased the selling price;

(iv) The extent to which the sale of a comparable property actually represents the general effective market demand for property of that type, in the geographical area in which the property is located; and

(v) Sales involving deed releases or similar seller-developer financing arrangements shall not be used as sales of comparable property in determining value.

(b) **Cost.** In determining true and fair value, consideration may be given to cost, cost less depreciation, or reconstruction cost less depreciation.

(c) **Income.** In determining true and fair value, consideration may be given to the capitalization of income that would be derived from prudent use of the property.

(d) **Manuals.** Appraisal manuals or guides published or approved by the department of revenue shall be considered in conjunction with the three approaches to value. The data contained in these manuals or guides must be analyzed and adjusted by the assessor to consider time, location, and any other applicable factors to properly reflect market value in the county.

(3) **True and fair value—Highest and best use.** Unless specifically provided otherwise by statute, all property shall be valued on the basis of its highest and best use for assessment purposes. Highest and best use is the most profitable, likely use to which a property can be put. It is the use which will yield the highest return on the owner's investment. Any reasonable use to which the property may be put may be taken into consideration and if it is peculiarly adapted to some particular use, that fact may be taken into consider-

ation. Uses that are within the realm of possibility, but not reasonably probable of occurrence, shall not be considered in valuing property at its highest and best use.

(4) **Valuation of land and improvements.** In valuing any lot, tract, or parcel of real property, the assessor must determine the true and fair value of the land, excluding the value of any structures on the land and excluding the value of any growing crops. The assessor must also determine the true and fair value of any structure on the land. The total value of the land and the structures must not exceed one hundred percent of the true and fair value of the total property as it exists at the time of appraisal.

(5) **Valuation data from property owners.** The assessor may require property owners to submit pertinent data regarding property in their control, including sales data, costs and characteristics of improvements, and other facts necessary for appraisal of the property.

[Statutory Authority: RCW 84.08.070, 00-01-043, § 458-07-030, filed 12/7/99, effective 1/7/00.]

WAC 458-07-035 Listing of property—Subdivisions and segregation of interests. (1) **Listing of property.** The assessor must begin the listing and valuation of all property in the county, except new construction and mobile homes not previously assessed in this state, not later than December 1st of each year, and complete the listing and valuation not later than May 31st of the succeeding year. The listing and valuation of new construction and mobile homes not previously assessed in this state must be completed by August 31st of each year.

(2) **Valuation of subdivisions.** The assessor must list and value all subdivisions of real property at one hundred percent of true and fair value as follows:

(a) If an advance tax deposit was paid in accordance with RCW 58.08.040, each lot of a subdivision must be valued by October 30th of the year following the recording of the plat, replat, altered plat, or binding site plan. The value established shall be the value of the lot as of January 1st of the year the original parcel was last revalued. Each lot of a subdivision that is valued on or before May 31st, or the closing of the assessment roll, whichever is later, shall be placed on the roll for that assessment year. Each lot of a subdivision that is valued after May 31st, or the closing of the assessment roll, whichever is later, shall be placed on the roll for the succeeding assessment year; and

(b) If no advance tax deposit was paid, each lot of a subdivision must be valued by the end of the calendar year following the recording of the plat, map, subdivision, or replat. The value established shall be the value of the lot as of January 1st of the year the original parcel was last revalued. Each lot of a subdivision that is valued on or before May 31st, or the closing of the assessment roll, whichever is later, shall be placed on the roll for that assessment year. Each lot of a subdivision that is valued after May 31st, or the closing of the assessment roll, whichever is later, shall be placed on the roll for the succeeding assessment year.

(3) **Petition for payment of taxes on partial interest.** Any person desiring to pay taxes on only their interest in a parcel of real property, whether their interest is a divided

interest or an undivided interest, may do so by applying to the assessor of the county where the property is located. The assessor shall determine the value of the applicant's interest and certify that value to the county treasurer who shall accept payment of taxes for the applicant's interest in the property. No segregation of the property shall be made unless all delinquent taxes and assessments on the entire parcel have been paid in full, except for the following situations, in which all delinquent taxes and assessments on the entire parcel need not first be paid in full:

(a) When property is being acquired for public use; and

(b) When a person or financial institution desires to pay the taxes and any penalties and interest on a mobile home upon which they have a lien by mortgage or otherwise.

[Statutory Authority: RCW 84.08.070. 00-01-043, § 458-07-035, filed 12/7/99, effective 1/7/00.]

Chapter 458-12 WAC

PROPERTY TAX DIVISION—RULES FOR ASSESSORS

WAC

458-12-040	Repealed.
458-12-300	Repealed.
458-12-301	Repealed.
458-12-305	Repealed.
458-12-326	Repealed.
458-12-327	Repealed.
458-12-330	Repealed.
458-12-335	Repealed.
458-12-336	Repealed.
458-12-337	Repealed.
458-12-338	Repealed.
458-12-339	Repealed.
458-12-350	Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-12-040	Listing of property—Segregation of interests. [Order PT 68-6, § 458-12-040, filed 4/29/68.] Repealed by 00-01-043, filed 12/7/99, effective 1/7/00. Statutory Authority: RCW 84.08.070.
458-12-300	Definition—True and fair value. [Order PT 68-6, § 458-12-300, filed 4/29/68.] Repealed by 00-01-043, filed 12/7/99, effective 1/7/00. Statutory Authority: RCW 84.08.070.
458-12-301	True and fair value—Criteria. [Order PT 74-6, § 458-12-301, filed 9/11/74; Order 72-3, § 458-12-301, filed 2/23/72.] Repealed by 00-01-043, filed 12/7/99, effective 1/7/00. Statutory Authority: RCW 84.08.070.
458-12-305	Market value—Estimation—Real property. [Order PT 68-6, § 458-12-305, filed 4/29/68.] Repealed by 00-01-043, filed 12/7/99, effective 1/7/00. Statutory Authority: RCW 84.08.070.
458-12-326	Revaluation—Definitions. [Statutory Authority: RCW 84.41.090 and 84.08.010. 83-22-004 (Order PT 83-6), § 458-12-326, filed 10/20/83.] Repealed by 00-01-043, filed 12/7/99, effective 1/7/00. Statutory Authority: RCW 84.08.070.
458-12-327	Revaluation—Valuation criteria—Methods. [Statutory Authority: RCW 84.41.090 and 84.08.010. 83-22-004 (Order PT 83-6), § 458-12-327, filed 10/20/83.] Repealed by 00-01-043, filed 12/7/99, effective 1/7/00. Statutory Authority: RCW 84.08.070.
458-12-330	Real property valuation—Highest and best use. [Order PT 68-6, § 458-12-330, filed 4/29/68.] Repealed by 00-01-043, filed 12/7/99, effective 1/7/00. Statutory Authority: RCW 84.08.070.
458-12-335	Revaluation process by county assessor. [Statutory Authority: RCW 84.41.090 and 84.08.010. 83-22-004 (Order PT 83-6), § 458-12-335, filed 10/20/83; Order 73-5, § 458-12-335, filed 8/13/73; Order PT 68-6, § 458-12-335, filed 4/29/68.] Repealed by 00-01-043,

filed 12/7/99, effective 1/7/00. Statutory Authority: RCW 84.08.070.

458-12-336	Assessor's revaluation plan. [Statutory Authority: RCW 84.41.090 and 84.08.010. 83-22-004 (Order PT 83-6), § 458-12-336, filed 10/20/83; Order 73-5, § 458-12-336, filed 8/13/73.] Repealed by 00-01-043, filed 12/7/99, effective 1/7/00. Statutory Authority: RCW 84.08.070.
458-12-337	Revaluation process—Reports. [Statutory Authority: RCW 84.41.090 and 84.08.010. 83-22-004 (Order PT 83-6), § 458-12-337, filed 10/20/83; Order 73-5, § 458-12-337, filed 8/13/73.] Repealed by 00-01-043, filed 12/7/99, effective 1/7/00. Statutory Authority: RCW 84.08.070.
458-12-338	Revaluation process—Department of revenue—Performance—Standards—Assistance. [Order 73-5, § 458-12-338, filed 8/13/73.] Repealed by 00-01-043, filed 12/7/99, effective 1/7/00. Statutory Authority: RCW 84.08.070.
458-12-339	Revaluation process—Valuation procedure—Uniformity within cyclical period. [Statutory Authority: RCW 84.41.090 and 84.08.010. 83-22-004 (Order PT 83-6), § 458-12-339, filed 10/20/83; Order 73-5, § 458-12-339, filed 8/13/73.] Repealed by 00-01-043, filed 12/7/99, effective 1/7/00. Statutory Authority: RCW 84.08.070.
458-12-350	Assessment and evaluation—Separate valuation of lands and improvements. [Order PT 68-6, § 458-12-350, filed 4/29/68.] Repealed by 00-01-043, filed 12/7/99, effective 1/7/00. Statutory Authority: RCW 84.08.070.

WAC 458-12-040 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-12-300 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-12-301 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-12-305 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-12-326 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-12-327 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-12-330 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-12-335 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-12-336 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-12-337 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-12-338 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-12-339 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-12-350 Repealed. See Disposition Table at beginning of this chapter.

Chapter 458-16 WAC
PROPERTY TAX—EXEMPTIONS

WAC

458-16-280	Art, scientific, and historical collections.
458-16-282	Musical, dance, artistic, dramatic and literary associations.
458-16-320	Emergency or transitional housing.

WAC 458-16-280 Art, scientific, and historical collections. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.060 to art, scientific, or historical collections.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Governmental entity" means any political unit or division of the federal, state, city, county, or municipal government.

(b) "Property" means all real and personal property exclusively used to secure, maintain, and exhibit art, scientific, or historical collections.

(3) **Exemption for existing property.** All art, scientific, or historical collections owned by associations maintaining and exhibiting the collections to the general public and not for profit, together with all real and personal property owned by these associations and used exclusively to secure, maintain, and exhibit the collections, shall be exempt from taxation under the following conditions:

(a) An organization, association, or corporation must be organized and operated exclusively for artistic, scientific, or historical purposes.

(b) The organization, association, or corporation organized and operated for artistic, scientific, or historical purposes must receive a substantial part of its income from a governmental entity or through direct or indirect contributions of money, real or personal property, or services from the general public. Admission or entrance fees derived from exercising or performing its purpose or function shall not be included within the figures used to calculate "a substantial part" of the organization's, association's, or corporation's income.

(i) For example, an art museum may receive support from a city government and from donations made by the general public in addition to general admission fees paid by visitors. When determining whether the art museum receives a substantial part of its income from a governmental entity or through contributions from the general public, the admission fees may not be considered as contributions from the general public.

(ii) Any organization, association, or corporation that relies on services donated by the general public for a substantial part for its support must maintain records identifying the individuals who donate their services and the number of hours they donate. The value of donated time will be calculated by using the federal minimum wage standard.

(4) **Exemption for property under construction or soon to be used for an exempt purpose.** Property that is

being constructed, remodeled, or otherwise prepared to maintain and exhibit art, scientific, or historical collections, may qualify for exemption under certain circumstances. A nonprofit organization, association, or corporation seeking an exemption for property not currently being used for an exempt purpose may qualify if the property will be used for an exempt purpose within a reasonable period of time and proof is submitted that a reasonably specific and active program is being carried out to enable the property to be used to maintain and exhibit an art, scientific, or historical collection.

(a) Acceptable proof of a specific and active building or remodeling program shall include, but is not limited to, the following items:

(i) Affirmative action by the board of directors, trustees, or governing body of the nonprofit organization, association, or corporation endorsing and underwriting the construction or remodeling;

(ii) Itemized reasons for the proposed construction or remodeling;

(iii) Clearly established plans for financing the construction or remodeling; and

(iv) Building permits necessary to begin or continue the construction or remodeling.

(b) Property under construction shall not qualify for exemption during this interim period if the property is used by, loaned to, or rented to a for-profit organization or business enterprise.

(5) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.060.

[Statutory Authority: RCW 84.36.865 and 84.36.060. 99-18-008, § 458-16-280, filed 8/19/99, effective 9/19/99. Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-280, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 86-12-034 (Order PT 86-2), § 458-16-280, filed 5/30/86; 85-05-025 (Order PT 85-1), § 458-16-280, filed 2/15/85; 81-21-009 (Order PT 81-13), § 458-16-280, filed 10/8/81; Order PT 77-2, § 458-16-280, filed 5/23/77; Order PT 76-2, § 458-16-280, filed 4/7/76. Formerly WAC 458-12-235.]

WAC 458-16-282 Musical, dance, artistic, dramatic and literary associations. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.060 to organizations, associations, or corporations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Governmental entity" means any political unit or division of the federal, state, county, city, or municipal government.

(b) "Property" means all real and personal property exclusively used to produce or perform musical, dance, artistic, dramatic, or literary works.

(3) **Exemption.** All real and personal property owned by or leased to a nonprofit organization, association, or corporation engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of

the general public and not for profit shall be exempt from taxation under the following conditions:

(a) The property must be used exclusively to produce or perform musical, dance, artistic, dramatic, or literary works.

(b) An organization, association, or corporation must be organized and operated exclusively for musical, dance, artistic, dramatic, literary, or educational purposes.

(c) The organization, association, or corporation organized and operated for musical, dance, artistic, dramatic, literary, or educational purposes must receive a substantial portion of its income from a governmental entity or from direct or indirect contributions of money, real or personal property, or services from the general public. Admission or entrance fees derived from producing or performing musical, dance, artistic, dramatic, literary, or educational works shall not be included within the figures used to calculate "a substantial part" of the organization's, association's or corporation's income.

(i) For example, a theater may receive support from a city government and from donations made by the general public in addition to ticket sales for admission to its performances. When determining whether the theater receives a substantial part of its income from a governmental entity or through contributions from the general public, the ticket sales may not be considered as contributions from the general public.

(ii) Any organization that relies on services donated by the general public for a substantial portion of its support must maintain records identifying the individuals who donate their services and the number of hours they donate. The value of donated time will be calculated by using the federal minimum wage standard.

(4) **Exemption for property under construction or soon to be used for an exempt purpose.** Property that is being constructed, remodeled, or otherwise prepared to be used by associations engaged in the production and performance of musical, dance, artistic, dramatic, literary, or educational works, may qualify for exemption under certain circumstances. A nonprofit organization, association, or corporation seeking an exemption for property not currently being used for an exempt purpose, may qualify if the property will be used for an exempt purpose within a reasonable period of time and proof is submitted that a reasonably specific and active program is being carried out to enable the property to be used by associations engaged in the production and performance of musical, dance, artistic, dramatic, literary, or educational works.

(a) Acceptable proof of a specific and active building or remodeling program shall include, but is not limited to, the following items:

(i) Affirmative action by the board of directors, trustees, or governing body of the nonprofit organization, association, or corporation endorsing and underwriting the construction or remodeling;

(ii) Itemized reasons for the proposed construction or remodeling;

(iii) Clearly established plans for financing the construction or remodeling; and

(iv) Building permits necessary to begin or continue the construction or remodeling.

(b) Property under construction shall not qualify for exemption during this interim period if the property is used by, loaned to, or rented to a for-profit organization or business enterprise.

(5) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.060.

[Statutory Authority: RCW 84.36.865 and 84.36.060. 99-18-008, § 458-16-282, filed 8/19/99, effective 9/19/99. Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-282, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 86-12-034 (Order PT 86-2), § 458-16-282, filed 5/30/86; 85-05-025 (Order PT 85-1), § 458-16-282, filed 2/15/85; 81-21-010 (Order PT 81-14), § 458-16-282, filed 10/8/81.]

WAC 458-16-320 Emergency or transitional housing.

(1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.043 to real and personal property used by a nonprofit organization, association, or corporation to provide emergency or transitional housing to low income persons or victims of domestic violence who are homeless for personal safety reasons.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Emergency housing" means a facility whose primary purpose is to provide temporary or transitional shelter and supportive services to the homeless in general or to a specific population of the homeless for no more than sixty days.

(b) "Homeless" means a person, persons, family, or families who do not have fixed, regular, adequate, or safe shelter nor sufficient funds to pay for such shelter.

(c) "Low-income" means income that does not exceed eighty percent of the median income for the standard metropolitan statistical area in which the city or town is located.

(d) "Supportive services" means resume writing, training, vocational and psychological counselling, or other similar programs designed to assist the homeless into independent living.

(e) "Transitional housing" means a facility that provides housing and supportive services to homeless individuals or families for up to two years and whose primary purpose is to enable homeless individuals or families to move into independent living and permanent housing.

(f) "Victim(s) of domestic violence" means either an adult(s) or a child(ren) who have been physically or mentally abused and who fled his or her home out of fear for his or her safety.

(g) "Property" means real or personal property used by a nonprofit organization, association, or corporation in providing emergency or transitional housing and supportive services for low-income homeless persons or victims of domestic violence.

(h) "Commercial" refers to an activity or enterprise that has profit making as its primary purpose.

(3) **Exemption.** The real and personal property exclusively used, or to the extent that it is exclusively used, by a nonprofit organization, association or corporation to provide

emergency or transitional housing to low-income homeless persons or victims of domestic violence shall be exempt from taxation if the following conditions are met:

(a) The amount of the charge or fee for the housing does not exceed maintenance and operation expenses;

(b) The property is either:

(i) Owned by a nonprofit organization, association, or corporation; or

(ii) Rented or leased by a nonprofit organization, association, or corporation and the benefit of the exemption inures to a nonprofit organization, association, or corporation; and

(c) If any portion of the organization's, association's or corporation's property is used for a commercial purpose rather than for an exempt purpose, that portion of the property must be segregated and taxed.

(4) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165 that explains the additional conditions and requirements necessary to obtain a property tax exemption pursuant to RCW 84.36.043.

[Statutory Authority: RCW 84.36.865 and 84.36.043, 99-13-018, § 458-16-320, filed 6/4/99, effective 7/5/99. Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW, 94-07-008, § 458-16-320, filed 3/3/94, effective 4/3/94.]

Chapter 458-16A WAC NONPROFIT HOMES FOR THE AGING

WAC

458-16A-010 Nonprofit homes for the aging.

WAC 458-16A-010 Nonprofit homes for the aging.

(1) **Introduction.** Under RCW 84.36.041, a nonprofit home for the aging may be totally or partially exempt from property tax. This section explains the exemptions allowed and the criteria that must be met in order to receive an exemption under this statute. Throughout this section, all requirements will pertain to all types of homes for the aging including, but not limited to, adult care homes, assisted living facilities, continuing care retirement communities (CCRC), and independent housing, unless a particular type of home is separately identified.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Acquisition" means that an existing home for the aging (or home) currently in operation is acquired by a nonprofit organization and the ownership of the facility will change as a result of a purchase, gift, foreclosure, or other method.

(b) "Assistance with activities of daily living" means the home provides, brokers, or contracts for the provision of auxiliary services to residents, such as meal and housekeeping service, transportation, ambulatory service, and attendant care including, but not limited to, bathing and other acts related to personal hygiene, dressing, shopping, food preparation, monitoring of medication, and laundry services.

(c) "Combined disposable income" means the disposable income of the person submitting the income verification form, plus the disposable income of his or her spouse, and the

disposable income of each cotenant occupying the dwelling unit for the preceding calendar year, less amounts paid by the person submitting the income verification form or his or her spouse or cotenant during the previous year for the treatment or care of either person received in the dwelling unit or in a nursing home.

(i) If the person submitting the income verification form was retired for two months or more of the preceding calendar year, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person during the months the person was retired by twelve.

(ii) If the income of the person submitting the income verification form is reduced for two or more months of the preceding calendar year because of the death of the person's spouse, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person after the death of the spouse by twelve.

(d) "Complete and separate dwelling units" means that the individual units of a home contain complete facilities for living, sleeping, cooking, and sanitation.

(e) "Construction" means the actual construction or building of all or a portion of a home that did not exist prior to the construction.

(f) "Continuing care retirement community" or "CCRC" means an entity that provides shelter and services under continuing care contracts with its residents or includes a health care facility or health service.

(g) "Continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related or personal care services, that is conditioned upon the transfer of property, the payment of an entrance fee to the provider of the services, and/or the payment of periodic charges in consideration for the care and services provided. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

(h) "Cotenant" means a person who resides with an eligible resident and who shares personal financial resources with the eligible resident.

(i) "Disposable income" means adjusted gross income as defined in the federal Internal Revenue Code, as amended prior to January 1, 1994, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

(i) Capital gains, other than nonrecognized gain on the sale of a principal residence under section 1034 of the federal Internal Revenue Code, or gain excluded from income under section 121 of the federal Internal Revenue Code to the extent it is reinvested in a new principal residence;

(ii) Amounts deducted for loss;

(iii) Amounts deducted for depreciation;

(iv) Pension and annuity receipts;

(v) Military pay and benefits other than attendant-care and medical-aid payments;

(vi) Veterans benefits other than attendant-care and medical-aid payments;

- (vii) Federal Social Security Act and railroad retirement benefits;
- (viii) Dividend receipts; and
- (ix) Interest received on state and municipal bonds.
- (j) "Eligible resident" means a person who:
 - (i) Occupied the dwelling unit as a principal place of residence as of January 1st of the year in which the claim for exemption is filed. The exemption will not be nullified if the eligible resident is confined to a hospital or nursing home and the dwelling unit is temporarily unoccupied or occupied by a spouse, a person financially dependent on the claimant for support, or both;
 - (ii) Is sixty-one years of age or older on December 31st of the year in which the claim for exemption is filed, or is, at the time of filing, retired from regular gainful employment by reason of physical disability. A surviving spouse of a person who was receiving an exemption at the time of the person's death will qualify for this exemption if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this subsection; and
 - (iii) Has a combined disposable income that is no more than the greater of twenty-two thousand dollars or eighty percent of the median income adjusted for family size as determined by the federal Department of Housing and Urban Development (HUD) for the county in which the person resides and in effect as of January 1 of the year the application for exemption is submitted.
- (k) "Home for the aging" or "home" means a residential housing facility that:
 - (i) Provides a housing arrangement chosen voluntarily by the resident, the resident's guardian or conservator, or another responsible person;
 - (ii) Has only residents who are at least sixty-one years of age or who have needs for care generally compatible with persons who are at least sixty-one years of age; and
 - (iii) Provides varying levels of care and supervision, as agreed to at the time of admission or as determined necessary at subsequent times of reappraisal.
- (l) "HUD" means the federal Department of Housing and Urban Development.
- (m) "Local median income" means the median income adjusted for family size as most recently determined by HUD for the county in which the home is located and in effect on January 1st of the year the application for exemption is submitted.
- (n) "Low income" means that the combined disposable income of a resident is eighty percent or less of the median income adjusted for family size as most recently determined by HUD for the county in which the home is located and in effect as of January 1st of the year the application for exemption is submitted.
- (o) "Occupied dwelling unit" means a living unit that is occupied on January 1st of the year in which the claim for exemption is filed.
- (p) "Property that is reasonably necessary" means all property that is:
 - (i) Operated and used by a home; and
 - (ii) The use of which is restricted to residents, guests, or employees of a home.

(q) "Refinancing" means the discharge of an existing debt with funds obtained through the creation of new debt. For purposes of this section, even if the application for tax exempt bond financing to refinance existing debt is treated by the financing agent as something other than refinancing, an application for a property tax exemption because of refinancing by tax exempt bonds will be treated as refinancing and the set-asides specific to refinancing will be applied. "Refinancing" shall include tax exempt bond financing in excess of the amount of existing debt that is obtained to modify, improve, restore, extend, or enlarge a facility currently being operated as a home.

(r) "Rehabilitation" means that an existing building or structure, not currently used as a home, will be modified, improved, restored, extended, or enlarged so that it will be used as a home for elderly and disabled individuals. A project will be considered a rehabilitation if the costs of rehabilitation exceed five thousand dollars. If a home has acquired tax exempt bond financing and does not meet the definition of "rehabilitation" contained in this subsection, the home may be eligible for a total exemption under the "refinancing" definition and if it meets the "refinancing" set-aside requirements. If such a home is not eligible for a total exemption, the department will determine the home's eligibility for a partial exemption in accordance with the pertinent parts of RCW 84.36.041 and this section.

(s) "Set-aside(s)" means the percentage of dwelling units reserved for low-income residents when the construction, rehabilitation, acquisition, or refinancing of a home is financed under a financing program using tax exempt bonds.

(t) "Shared dwelling units" or "shared units" means individual dwelling units of a home that do not contain complete facilities for living, eating, cooking, and sanitation.

(u) "Taxable value" means the value of the home upon which the tax rate is applied in order to determine the amount of property taxes due.

(v) "Total amount financed" means the total amount of financing required by the home to fund construction, acquisition, rehabilitation, or refinancing. Seventy-five percent of this amount must be supplied by tax exempt bonds to receive the total exemption from property tax available under the tax exempt bond financing provision of RCW 84.36.041.

(3) **General requirements.** To be exempt under this section, a home for the aging must be:

(a) Exclusively used for the purposes for which exemption is granted, except as provided in RCW 84.36.805;

(b) Operated by an organization that is exempt from income tax under section 501(c) of the federal Internal Revenue Code; and

(c) The benefit of the exemption must inure to the home.

(4) **Total exemption.** There are three ways in which a home may be totally exempt from property tax. All real and personal property used by a nonprofit home that is reasonably necessary for the purposes of the home is exempt if it meets the general requirements listed in subsection (3) of this section and:

(a) At least fifty percent of the occupied dwelling units in the home are occupied by eligible residents;

(b) The home is subsidized under a HUD program; or

(c) The construction, rehabilitation, acquisition, or refinancing of a home is financed under a program using bonds exempt from federal income tax if at least seventy-five percent of the total amount financed uses tax exempt bonds and the financing program requires the home to reserve or set-aside a percentage of all dwelling units so financed for low-income residents. See subsections (5), (6), and (7) of this section for tax exempt bond requirements and the percentage of units that must be set-aside for low-income residents in order for the home to be totally exempt.

(5) Homes or CCRCs financed by tax exempt bonds—Generally. All real and personal property used by a nonprofit home or CCRC may be totally exempt from property tax if at least seventy-five percent of the total amount financed for construction, rehabilitation, acquisition, or refinancing uses tax exempt bonds and the financing program requires the home or CCRC to reserve or set-aside a percentage of all dwelling units so financed for low-income residents.

(a) The percentage of set-aside units required will vary depending on whether the home is a CCRC, the purpose for which the tax exempt bond financing was obtained, the type of dwelling unit, and the receipt of Medicaid funds. The set-aside requirements for homes are set forth in subsection (6) of this section and for CCRCs are set forth in subsection (7) of this section.

(b) The exemption will be granted in direct correlation between the total amount financed by tax exempt bonds and the portion of the home or CCRC that is constructed, acquired, rehabilitated, or refinanced by tax exempt bonds.

(c) If tax exempt bonds are used for refinancing, the set-aside requirements set forth in subsections (6) and (7) of this section will be applied to the actual area or portion of the home or CCRC to which the bonds correspond.

(i) Example 1. A CCRC (that accepts Medicaid funds) is composed of a multistory building, six duplexes, and two independent homes and the CCRC has secured tax exempt bonds to satisfy an existing mortgage on the multistory building. Only the multistory building will be considered eligible for a total exemption from property tax because of tax exempt bond financing. To receive the exemption, at least twenty percent of the dwelling units of the multistory building must be set-aside for residents at or below fifty percent of the local median income or at least forty percent of the dwelling units must be set-aside for residents at or below sixty percent of the local median income.

(ii) Example 2. A home obtains tax exempt bonds to refinance a portion of the home and to fund construction. The department will separately consider the area of the home that corresponds to the purpose for which the tax exempt bonds were obtained. The set-aside requirements related to refinancing will be applied to the portion of the home that corresponds to the mortgage being refinanced and the set-aside requirements related to construction will be applied to the area of the home to be newly constructed. The department will determine the eligibility for partial exemption of the remainder of the home that is not being refinanced or constructed.

(d) If a total exemption is granted under the tax exempt bond financing provision, the total exemption will remain in effect as long as:

- (i) The home or CCRC remains in compliance with the requirements under which it received the tax exempt bonds;
- (ii) The tax exempt bonds are outstanding; and
- (iii) The set-aside requirements are met.

(e) If a home or CCRC has obtained tax exempt bond financing to modify, improve, restore, extend, or enlarge its existing facility and the project does not meet the definition of rehabilitation contained in subsection (2) of this section, the project will not be considered a rehabilitation and the set-aside requirements related to refinancing or acquisition will be applied in determining eligibility for a total exemption.

(f) When a home or CCRC no longer meets the criteria for exemption under the tax exempt bond financing portion of the statute, eligibility for exemption under RCW 84.34.041 will be determined by the other provisions of the statute. In other words, a home may receive a total or partial exemption depending on the number of residents who are deemed to be "eligible residents" or who require "assistance with activities of daily living." For example, if a home that previously received a total exemption due to the receipt of tax exempt bond financing has one hundred dwelling units and sixty of those dwelling units are occupied by eligible residents, the home may receive a total exemption.

(6) Set-aside requirements related to homes and tax exempt bond financing. A specified number of dwelling units within a home must be set-aside for low income residents to obtain a total property tax exemption because of tax exempt bond financing. The set-aside requirements for homes will be determined according to the type of dwelling units contained in the home and the purpose for which the tax exempt bond financing was obtained. The provisions of this section do not apply to CCRCs. The specific set-aside requirements for CCRCs are described in subsection (7) of this section.

A home must meet the following set-aside requirements to be totally exempt from property tax:

PURPOSE OF BOND FINANCING	TYPE OF DWELLING UNIT	SET-ASIDE REQUIREMENTS
New construction or Rehabilitation	Complete & Separate units	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 50% of local median income
Acquisition or Refinancing of dwelling units currently satisfying 10% and 10% set-aside requirements	Complete & Separate units	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside

PURPOSE OF BOND FINANCING	TYPE OF DWELLING UNIT	SET-ASIDE REQUIREMENTS
		for residents at or below 50% of local median income
Acquisition or Refinancing of dwelling units not currently satisfying 10% and 10% set-aside requirements	Complete & Separate units	20% of total units set-aside for residents at or below 50% of local median income or 40% of total units set-aside for residents at or below 60% of local median income
Acquisition, New Construction, Refinancing, or Rehabilitation	Shared units	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 50% of local median income

(7) **Set-aside requirements related to CCRCs and tax exempt bond financing.** A specified number of dwelling units of a CCRC must be set-aside for low income residents to obtain a total property tax exemption because of tax exempt bond financing. The set-aside requirements for CCRCs will be determined by whether the CCRC does or does not have Medicaid contracts for continuing care contract residents and the purpose for which the tax exempt bond financing was obtained. The provisions of this section do not apply to other homes. The specific set-aside requirements for other homes are described in subsection (6) of this section.

(a) The continuing care contract between the resident and the CCRC is a contract to provide shelter along with nursing, medical, health-related or personal care services to the resident for the duration of the resident's life or for a term in excess of one year. A resident's tenancy may not be terminated due to inability of the resident to fully pay the monthly service fee when the resident establishes facts to justify a waiver or reduction of these charges. This provision shall not apply if the resident, without the CCRC's consent, has impaired his and/or her ability to meet financial obligations required by the continuing care contract due to a transfer of assets, after signing the continuing care contract, other than to meet ordinary and customary living expenses, or by incurring unusual or unnecessary new financial obligations.

(b) A CCRC without Medicaid contracts for continuing care contract residents may not receive Medicaid funds from Washington state or the federal government during the term that the bonds are outstanding, except during the initial transition period as allowed by state law or if the regulatory

agreement with the tax exempt bond financier exempts the CCRC from compliance with this requirement.

(c) The following set-aside requirements must be met by CCRCs not receiving Medicaid funds (including CCRCs that are permitted to receive Medicaid funds during an initial transition period only) to receive a total exemption:

PURPOSE OF BOND FINANCING	SET-ASIDE REQUIREMENTS
New construction or Rehabilitation	10% of total units set-aside for residents at or below 80% of local median income and 15% of total units set-aside for residents at or below 100% of local median income
Acquisition or Refinancing of dwelling units currently satisfying 10% and 15% set-aside requirements	10% of total units set-aside for residents at or below 80% of local median income and 15% of total units set-aside for residents at or below 100% of local median income
Acquisition or Refinancing of dwelling units not currently satisfying 10% and 15% set-aside requirements	20% of total units set-aside for residents at or below 50% of local median income or 40% of total units set-aside for residents at or below 60% of local median income

(d) The following set-aside requirements must be met by CCRCs receiving Medicaid funds to receive a total exemption:

PURPOSE OF BOND FINANCING	SET-ASIDE REQUIREMENTS
New construction or Rehabilitation	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 100% of local median income
Acquisition or Refinancing of dwelling units currently satisfying 10% and 10% set-aside requirements	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 100% of local median income
Acquisition or Refinancing of dwelling units not currently satisfying 10% and 10% set-aside requirements	20% of total units set-aside for residents at or below 50% of local median income or 40% of total units set-aside for residents at or below 60% of local median income

(8) **Partial exemption.** If a home does not qualify for a total exemption from property tax, the home may receive a partial exemption for its real property on a unit by unit basis and a total exemption for its personal property.

(a) Real property exemption. If the real property of a home is used in the following ways, the portion of the real property so used will be exempt and the home may receive a partial exemption for:

(i) Each dwelling unit occupied by a resident requiring significant assistance with activities of daily living;

(ii) Each dwelling unit occupied by an eligible resident; and

(iii) Common or shared areas of the home that are jointly used for two or more purposes that are exempt from property tax under chapter 84.36 RCW.

(b) Assistance with activities of daily living. A home may receive a partial exemption for each dwelling unit that is occupied by a resident who requires significant assistance with the activities of daily living and the home provides, brokers, facilitates, or contracts for the provision of this assistance. A resident requiring assistance with the activities of daily living must be a resident who requires significant assistance with at least three of the nonexclusive list of activities set forth below and who, unless he or she receives the assistance, would be at risk of being placed in a nursing home. Activities of daily living include, but are not limited to:

(i) Shopping;

(ii) Meal and/or food preparation;

(iii) Housekeeping;

(iv) Transportation;

(v) Dressing;

(vi) Bathing;

(vii) General personal hygiene;

(viii) Monitoring of medication;

(ix) Ambulatory services;

(x) Laundry services;

(xi) Incontinence management; and

(xii) Cuing for the cognitively impaired.

(c) Examples of assistance with the activities of daily living:

(i) If the resident of a home requires someone to assist him or her with daily dressing, bathing, and personal hygiene, weekly housekeeping chores, and daily meal preparation, he or she is a resident requiring significant assistance with activities of daily living and the home may receive a partial exemption for the dwelling unit in which he or she resides.

(ii) If the resident of a CCRC only requires someone to clean his or her house weekly and to do the laundry weekly, the resident does not require significant assistance with activities of daily living and the CCRC may not receive a partial exemption for the dwelling unit.

(d) Common or shared areas. Areas of a home that are jointly used for two or more purposes exempt from property tax under chapter 84.36 RCW will be exempted under RCW 84.36.041.

(i) The joint use of the common or shared areas must be reasonably necessary for the purposes of the nonprofit organization, association, or corporation exempt from property tax under chapter 84.36 RCW. A kitchen, dining room, and laundry room are examples of the types of common or shared areas for which a partial property tax exemption may be granted.

(ii) Example. A nonprofit organization uses its facility as a home for the aging and a nursing home. The home and nurs-

ing home jointly use the kitchen and dining room. The home may receive a property tax exemption for the common or shared areas under RCW 84.36.041. The eligibility of the other areas of the facility will be determined by the appropriate statute. The home's eligibility will be determined by RCW 84.36.041 and the nursing home's eligibility will be determined by RCW 84.36.040.

(e) Amount of partial exemption. The amount of partial exemption will be calculated by multiplying the assessed value of the property reasonably necessary for the purposes of the home, minus/less the assessed value of any common or shared areas, by a fraction. The numerator of the fraction is the number of the dwelling units occupied on January 1st of the assessment year by eligible residents and by residents requiring assistance with activities of daily living. The denominator of the fraction is the total number of occupied dwelling units as of January 1st of the assessment year. Example:

Assessed value of home:	\$500,000
Less assessed value of common area:	- 80,000
Total	\$420,000

Number of units occupied on 1/1 by eligible residents and people requiring assistance with daily living activities =	6
Total of occupied units on 1/1	40 or 15

$\$420,000 \times .15 = \$63,000$ Amount of partial exemption
 $\$420,000 - \$63,000 = \$357,000$ Taxable value of home

(f) Valuation of the home. The assessor will value a home that receives a partial exemption by considering only the current use of the property during the period in which the partial exemption is received and will not consider any potential use of the property.

(9) **Income verification required from some residents.** If a home seeks a total property tax exemption because at least fifty percent of the occupied dwelling units are occupied by eligible residents or seeks to receive a partial exemption based upon the number of units occupied by eligible residents, the residents must submit income verification forms. The department may request income verification forms from residents of homes receiving a total exemption because of tax exempt bond financing.

(a) The income verification forms must be submitted to the assessor of the county in which the home is located by July 1st of the assessment year in which the application for exemption is made.

(b) The income verification form will be prescribed and furnished by the department of revenue.

(c) If an eligible resident filed an income verification form for a previous year, he or she is not required to submit a new form unless there is a change in status affecting the resident's eligibility, such as a significant increase or decrease in disposable income, or the assessor or the department requests a new income verification form to be submitted.

(10) **Additional requirements.** Any nonprofit home for the aging that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16A-020 and 458-16-165. WAC 458-16A-020 contains information regarding the initial application and renewal pro-

cedures relating to the exemption discussed in this section. WAC 458-16-165 sets forth additional requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.041.

[Statutory Authority: RCW 84.36.041 and 84.36.865. 99-04-016, § 458-16A-010, filed 1/22/99, effective 2/22/99. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.36.041. 95-06-041, § 458-16A-010, filed 2/24/95, effective 3/27/95.]

Chapter 458-18 WAC

PROPERTY TAX—ABATEMENTS, CREDITS, DEFERRALS AND REFUNDS

WAC

458-18-010	Deferral of special assessments and/or property taxes— Definitions.
458-18-220	Refunds—Rate of interest.

WAC 458-18-010 Deferral of special assessments and/or property taxes—Definitions. Introduction. This section is intended to provide definitions of the terms most frequently used to administer the deferral program for special assessments and/or property taxes on residential housing created by chapter 84.38 RCW. Unless a different meaning is plainly required by the context, the words and phrases used in this chapter have the following meanings:

(1) "Boarding house" means a residence in which lodging and meals are provided. Each resident of a boarding house is charged a lump sum to cover the costs of lodging and meals with no separate accounting for the fair selling price of the meals.

(2) "Claimant" means a person who either elects under chapter 84.38 RCW or is required under RCW 84.64.050 to defer payment of special assessments and/or real property taxes accrued on his or her residence by filing a declaration to defer as allowed under chapter 84.38 RCW. If more than one individual in a household wishes to defer special assessments and/or taxes, only one may file a declaration to defer; in other words, only one claimant per household is allowed.

(3) "Cooperative housing" means any existing structure, including surrounding land and improvements, that contains one or more dwelling units and is owned by:

(a) An association with resident shareholders who are granted renewable leasehold interests in dwelling units in the building. Unlike owners of a condominium, the resident shareholders who hold a renewable leasehold interest do not own their dwelling units; or

(b) An association organized under the Cooperative Association Act (chapter 23.86 RCW).

(4) "Department" means the state department of revenue.

(5) "Equity value" means the amount by which the true and fair value of a residence exceeds the total amount of all liens, obligations, and encumbrances against the property excluding the deferral liens. As used in this context, the "true and fair value" of a residence is the value shown on the county tax rolls maintained by the assessor for the assessment year in which the deferral claim is made.

(6) "Fire and casualty insurance" means a policy with an insurer that is authorized by the state insurance commission to insure property in this state.

(7) "Irrevocable trust" means a trust that may not be revoked after its creation by the trustor.

(8) "Lease for life" means a lease that terminates upon the death of the lessee.

(9) "Lien" means any interest in property given to secure payment of a debt or performance of an obligation, including a deed of trust. A lien includes the total amount of special assessments and/or property taxes deferred and the interest thereon. It also may include any other outstanding balance owed to local government for special assessments.

(10) "Life estate" means an estate that consists of total rights to use, occupy, and control real property but is limited to the lifetime of a designated party; this party is often called a "life tenant."

(11) "Local government" means any city, town, county, water-sewer district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi municipal corporation, or other political subdivision authorized to levy special assessments.

(12) "Perjury" means the willful assertion as to a matter of fact, opinion, belief, or knowledge made by a claimant upon the declaration to defer that the claimant knows to be false.

(13) "Real property taxes" means ad valorem property taxes levied on a residence in this state. The term includes foreclosure costs, interest, and penalties accrued as of the date the declaration to defer is filed.

(14) "Residence" has the same meaning given in RCW 84.36.383, except that it includes any additional property up to a total of five acres that comprises the residential parcel if land use regulations require this larger parcel size for the construction of a residential dwelling.

(15) "Revocable trust" means an agreement that entitles the trustor to have the full right to use the real property and to revoke the trust and retake complete ownership of the property at any time during his or her lifetime. The trustee of a revocable trust holds only bare legal title to the real property. Full equitable title to the property remains with the trustor; the original property owner.

(16) "Rooming house" means a residence where persons may rent rooms.

(17) "Special assessment" means the charge or obligation imposed by local government upon real property specially benefited by improvements.

[Statutory Authority: RCW 84.38.180 and 84.38.020. 99-21-044, § 458-18-010, filed 10/15/99, effective 11/15/99. Statutory Authority: RCW 84.38.180. 92-15-057, § 458-18-010, filed 7/13/92, effective 8/13/92; 88-13-042 (Order PT 88-9), § 458-18-010, filed 6/9/88; 84-21-010 (Order PT 84-4), § 458-18-010, filed 10/5/84; 81-05-020 (Order PT 81-8), § 458-18-010, filed 2/11/81; Order PT 76-1, § 458-18-010, filed 4/7/76.]

WAC 458-18-220 Refunds—Rate of interest. The following rates of interest shall apply on refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100. The following rates shall also apply to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030. The interest rate is derived from the equivalent coupon issue yield of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted after June 30th of the calendar year preceding the date the taxes were paid. The rate thus determined shall

be applied to the amount of the judgment or the amount of the refund, until paid:

Year tax paid	Auction Year	Rate
1985	1984	11.27%
1986	1985	7.36%
1987	1986	6.11%
1988	1987	5.95%
1989	1988	7.04%
1990	1989	8.05%
1991	1990	8.01%
1992	1991	5.98%
1993	1992	3.42%
1994	1993	3.19%
1995	1994	4.92%
1996	1995	5.71%
1997	1996	5.22%
1998	1997	5.14%
1999	1998	5.06%
2000	1999	4.96%

[Statutory Authority: RCW 84.69.100. 99-24-033, § 458-18-220, filed 11/23/99, effective 12/24/99. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.69.100. 99-01-066, § 458-18-220, filed 12/14/98, effective 1/1/99; 98-01-177, § 458-18-220, filed 12/23/97, effective 1/1/98; 97-02-068, § 458-18-220, filed 12/31/96, effective 1/1/97; 96-01-093, § 458-18-220, filed 12/19/95, effective 1/1/96; 95-06-044, § 458-18-220, filed 2/24/95, effective 3/27/95; 94-05-063, § 458-18-220, filed 2/11/94, effective 3/14/94. Statutory Authority: RCW 84.08.010 and 84.69.100. 93-06-096, § 458-18-220, filed 3/3/93, effective 4/3/93; 92-17-027, § 458-18-220, filed 8/11/92, effective 9/11/92; 91-15-024, § 458-18-220, filed 7/11/91, effective 8/11/91. Statutory Authority: RCW 84.69.100 and 84.08.010(2). 89-10-067 (Order PT 89-6), § 458-18-220, filed 5/3/89; 88-07-003 (Order PT 88-3), § 458-18-220, filed 3/3/88. Statutory Authority: RCW 84.69.100 as amended by 1987 c 319 and 84.08.010(2). 87-19-141 (Order PT 87-7), § 458-18-220, filed 9/23/87.]

Chapter 458-20 WAC EXCISE TAX RULES

WAC

458-20-101	Tax registration and tax reporting.
458-20-117	Sales and/or use of dunnage.
458-20-119	Sales of meals.
458-20-131	Games of chance.
458-20-157	Repealed.
458-20-165	Laundries, dry cleaners, self-service laundries and dry cleaners.
458-20-167	Educational institutions, school districts, student organizations, and private schools.
458-20-195	Taxes, deductibility.
458-20-206	Repealed.
458-20-207	Legal, arbitration, and mediation services.
458-20-216	Successors, quitting business.
458-20-222	Veterinarians.
458-20-225	Repealed.
458-20-226	Landscape and horticultural services.
458-20-231	Tax on internal distribution.
458-20-246	Sales to or through a direct seller's representative.
458-20-261	Exemptions and credits for ride sharing, public transportation, and nonmotorized commuting.
458-20-263	Wind, landfill gas, and solar energy electric generating facilities sales and use tax exemption.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-20-157	Producers of poultry and hatching eggs. [Statutory Authority: RCW 82.32.300. 86-21-085 (Order ET 86-18), § 458-20-157, filed 10/17/86. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order
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ET 78-4), § 458-20-157, filed 6/27/78; Order ET 70-3, § 458-20-157 (Rule 157), filed 5/29/70, effective 7/1/70.] Repealed by 99-08-005, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 82.32.300.

458-20-206	Use tax, fuel oil, oil products, other extracted products. [Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-206, filed 3/30/83; Order ET 70-3, § 458-20-206 (Rule 206), filed 5/29/70, effective 7/1/70.] Repealed by 99-08-005, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 82.32.300.
458-20-225	Pattern makers. [Order ET 70-3, § 458-20-225 (Rule 225), filed 5/29/70, effective 7/1/70.] Repealed by 99-08-005, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 82.32.300.

WAC 458-20-101 Tax registration and tax reporting.

(1) **Introduction.** This rule explains tax registration and tax reporting requirements for the Washington state department of revenue as established in RCW 82.32.030 and 82.32.045. This rule discusses who is required to be registered, and who must file excise tax returns. This rule also discusses changes in ownership requiring a new registration, the administrative closure of taxpayer accounts, and the revocation and reinstatement of a tax reporting account with the department of revenue. Persons required to file tax returns should also refer to WAC 458-20-104 (Small business tax relief based on volume of business).

(2) **Persons required to obtain tax registration endorsements.** Except as provided in (a) of this subsection, every person who is engaged in any business activity for which the department of revenue is responsible for administering and/or collecting a tax or fee, shall apply for and obtain a tax registration endorsement with the department of revenue. (See RCW 82.32.030.) This endorsement shall be reflected on the face of the business person's registrations and licenses document. The tax registration endorsement is non-transferable, and valid for as long as that person continues in business.

(a) Registration under this rule is not required if all of the following conditions are met:

(i) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW (business and occupation tax), is less than twelve thousand dollars per year;

(ii) A person's gross income from all business activities taxable under chapter 82.16 RCW (public utility tax), is less than twelve thousand dollars per year;

(iii) The person is not required to collect or pay to the department of revenue retail sales tax or any other tax or fee which the department is authorized to administer and/or collect; and

(iv) The person is not otherwise required to obtain a license or registration subject to the master application procedure provided in chapter 19.02 RCW. For the purposes of this rule, the term "license or registration" means any agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, including agency rule, to engage in any activity.

(b) The term "tax registration endorsement," as used in this rule, has the same meaning as the term "tax registration" or "certificate of registration" used in Title 82 RCW and other rules in chapter 458-20 WAC.

(c) The term "person" has the meaning given in RCW 82.04.030.

(d) The term "tax reporting account number" as used in this rule, is the number used to identify persons registered with the department of revenue.

(3) **Requirement to file tax returns.** Persons registered with the department must file tax returns and remit the appropriate taxes to the department, unless they are placed on an "active nonreporting" status by the department.

(a) The department may relieve any person of the requirement to file returns by placing the person in an active nonreporting status if all of the following conditions are met:

(i) The person's value of products (RCW 82.04.450), gross proceeds of sales (RCW 82.04.070), or gross income of the business (RCW 82.04.080), from all business activities taxable under chapter 82.04 RCW (business and occupation tax), is:

(A) Beginning July 1, 1999, less than twenty-eight thousand dollars per year (chapter 357, Laws of 1999); or

(B) Prior to July 1, 1999, less than twenty-four thousand dollars per year;

(ii) The person's gross income (RCW 82.16.010) from all business activities taxable under chapter 82.16 RCW (public utility tax) is less than twenty-four thousand dollars per year; and

(iii) The person is not required to collect or pay to the department retail sales tax or any other tax or fee the department is authorized to collect.

(b) The department will notify those persons it places on an active nonreporting status. (A person may request to be placed on an active nonreporting status if the conditions of (a) of this subsection are met.)

(c) Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities do not meet any of the conditions explained in (a) of this subsection. These persons will be removed from an active nonreporting status, and must file tax returns and remit appropriate taxes to the department, beginning with the first period in which they do not qualify for an active nonreporting status.

(d) Persons that have not been placed on an active nonreporting status by the department must continue to file tax returns and remit the appropriate taxes.

(4) **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 status of each situation must be determined after a review of all facts and circumstances.

(a) Bob Brown is starting a bookkeeping service. The gross income of the business is expected to be less than twelve thousand dollars per year. Due to the nature of the business activities, Bob is not required to pay or collect any other tax which the department is authorized to collect.

Bob Brown is not required to apply for and obtain a tax registration endorsement with the department of revenue. The conditions under which a business person may engage in business activities without obtaining the tax registration endorsement have been met. However, if Bob Brown in some future period has gross income exceeding twelve thousand dollars per year, he will be required to obtain a tax registration endorsement. If Bob's gross income exceeds twenty-

eight thousand dollars per year, he will be required to file tax returns and remit the appropriate taxes.

(b) Cindy Smith is opening a business to sell books written for children to local customers at retail. The gross proceeds of sales are expected to be less than twelve thousand dollars per year.

Cindy Smith must apply for and obtain a tax registration endorsement with the department of revenue. While gross income is expected to be less than twelve thousand dollars per year, Cindy Smith is required to collect and remit retail sales tax.

(c) Alice Smith operates a taxicab service with an average gross income of eighteen thousand dollars per year. She also owns a management consulting service with an average gross income of fifteen thousand dollars per year. Assume that Alice is not required to collect or pay to the department any other tax or fee the department is authorized to collect. Alice qualifies for an active nonreporting status because her taxicab income is less than the twenty-four thousand dollar threshold for the public utility tax, and her consulting income is less than the twenty-four thousand dollar threshold for the business and occupation (B&O) tax. If the department of revenue does not first place her on an active nonreporting status, she may request the department to do so.

(5) **Out-of-state businesses.** The B&O and public utility taxes are imposed on the act or privilege of engaging in business activity within Washington. RCW 82.04.220 and 82.16.020. Out-of-state persons who have established sufficient nexus in Washington to be subject to Washington's B&O or public utility taxes must obtain a tax registration endorsement with this department if they do not satisfy the conditions expressed in subsection (2)(a) of this rule. Out-of-state persons required to collect Washington's retail sales or use tax, or who have elected to collect Washington's use tax, even though not statutorily required to do so, must obtain a tax registration endorsement.

(a) Persons with out-of-state business locations should not include income that is disassociated from their in-state activities in their computations for determining whether the gross income thresholds provided in subsection (2)(a)(i) and (ii) are satisfied.

(b) Out-of-state persons making sales into or doing business within Washington should also refer to the following rules in chapter 458-20 WAC for a discussion of their tax reporting responsibilities:

(i) WAC 458-20-103 (Time and place of sale);

(ii) WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property);

(iii) WAC 458-20-193D (Transportation, communication, public utility activities, or other services in interstate or foreign commerce);

(iv) WAC 458-20-194 (Doing business inside and outside the state); and

(v) WAC 458-20-221 (Collection of use tax by retailers and selling agents).

(6) **Registration procedure.** The state of Washington initiated the unified business identifier (UBI) program to simplify the registration and licensing requirements imposed on the state's business community. Completion of the master application enables a person to register or license with sev-

eral state agencies, including the department of revenue, using a single form. The person will be assigned one unified business identifier number, which will be used for all state agencies participating in the UBI program. The department may assign the unified business identifier number as the taxpayer's revenue tax reporting account number, or it may assign a different or additional number as the revenue tax reporting account number.

(a) Persons completing the master application will be issued a registrations and licenses document. The face of this document will list the registrations and licenses (endorsements) which have been obtained.

(b) The department of revenue does not charge a registration fee for issuing a tax registration endorsement. Persons required to complete a master application may, however, be subject to other fees.

(c) While the UBI program is administered by the department of licensing, master applications are available at any participating UBI service provider location. The following agencies of the state of Washington participate in the UBI program (see RCW 19.02.050 for a more complete listing of participating agencies):

- (i) The office of the secretary of state;
- (ii) The department of licensing;
- (iii) The department of employment security;
- (iv) The department of labor and industries;
- (v) The department of revenue.

(7) **Temporary revenue registration certificate.** A temporary revenue registration certificate may be issued to any person who operates a business of a temporary nature.

(a) Temporary businesses, for the purposes of registration, are those with:

- (i) Definite, predetermined dates of operation for no more than two events each year with each event lasting no longer than one month; or
- (ii) Seasonal dates of operation lasting no longer than three months. However, persons engaging in business activities on a seasonal basis every year should refer to subsection (8) of this rule.

(b) Each temporary registration certificate is valid for a single event.

(c) Temporary revenue registration certificates may be obtained by making application at any participating UBI agency office, or by completing a seasonal registration form.

(8) **Seasonal revenue tax reporting accounts.** Persons engaging in seasonal business activities which do not exceed two quarterly reporting periods each calendar year may be eligible for a tax reporting account with a seasonal reporting status. This is a permanent account until closed by the taxpayer. The taxpayer must specify in which quarterly reporting periods he or she will be engaging in taxable business activities. The quarterly reporting periods in which the taxpayer is engaging in taxable business activities may or may not be consecutive, but the same quarterly period or periods must apply each year. The taxpayer is not required to be engaging in taxable business activities during the entire period.

The department will provide and the taxpayer will be required to file tax returns only for the quarterly reporting periods specified by the taxpayer. Examples of persons which

may be eligible for the seasonal reporting status include persons operating Christmas tree and/or fireworks stands. Persons engaging in taxable business activities in more than two quarterly reporting periods in a calendar year will not qualify for the seasonal reporting status.

(9) **Display of registrations and licenses document.** The taxpayer is required to display the registrations and licenses document in a conspicuous place at the business location for which it is issued.

(10) **Multiple locations.** A registrations and licenses document is required for each place of business at which a taxpayer engages in business activities for which the department of revenue is responsible for administering and/or collecting a tax or fee, and any main office or principal place of business from which excise tax returns are to be filed. This requirement applies to locations both within and without the state of Washington.

(a) For the purposes of this subsection, the term "place of business" means:

- (i) Any separate establishment, office, stand, cigarette vending machine, or other fixed location; or
- (ii) Any vessel, train, or the like, at any of which the taxpayer solicits or makes sales of tangible personal property, or contracts for or renders services in this state or otherwise transacts business with customers.

(b) A taxpayer wishing to report all tax liability on a single excise tax return may request a separate registrations and licenses document for each location. The original registrations and licenses document shall be retained for the main office or principal place of business from which the returns are to be filed, with additional documents obtained for all branch locations. All registrations and licenses documents will reflect the same tax reporting account number.

(c) A taxpayer desiring to file a separate excise tax return covering a branch location, or a specific construction contract, may apply for and receive a separate revenue tax reporting account number. A registrations and licenses document will be issued for each tax reporting account number and will represent a separate account.

(d) A master application must be completed to obtain a separate registrations and licenses document, or revenue tax reporting account number, for a new location.

(11) **Change in ownership.** When a change in ownership of a business occurs, the new owner must apply for and obtain a new registrations and licenses document. The original document must be destroyed, and any further use of the tax reporting account number for tax purposes is prohibited.

(a) A "change in ownership," for purposes of registration, occurs upon but is not limited to:

- (i) The sale of a business by one individual, firm or corporation to another individual, firm or corporation;
- (ii) The dissolution of a partnership;
- (iii) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the composition of the partners is equal to or greater than fifty percent;
- (iv) Incorporation of a business previously operated as a partnership or sole proprietorship;

(v) Changing from a corporation to a partnership or sole proprietorship; or

(vi) Changing from a corporation, partnership or sole proprietorship to a limited liability company or a limited liability partnership.

(b) For the purposes of registration, a "change in ownership" does not occur upon:

(i) The sale of all or part of the common stock of a corporation;

(ii) The transfer of assets to an assignee for the benefit of creditors or upon the appointment of a receiver or trustee in bankruptcy;

(iii) The death of a sole proprietor where there will be a continuous operation of the business by the executor, administrator, or trustee of the estate or, where the business was owned by a marital community, by the surviving spouse of the deceased owner;

(iv) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the composition of the partners is less than fifty percent; or

(v) A change in the trade name under which the business is conducted.

(c) While changes in a business entity may not result in a "change in ownership," the completion of a new master application may be required to reflect the changes in the registered account.

(12) **Change in location.** Whenever the place of business is moved to a new location, the taxpayer must notify the department of the change. A new registrations and licenses document will be issued to reflect the change in location.

(13) **Lost registrations and licenses documents.** If any registrations and licenses document is lost, destroyed or defaced as a result of accident or of natural wear and tear, a new document will be issued upon request.

(14) **Administrative closure of taxpayer accounts.** The department may, upon written notification to the taxpayer, close the taxpayer's tax reporting account and rescind its tax registration endorsement whenever the taxpayer has reported no gross income and there is no indication of taxable activity for two consecutive years.

The taxpayer may request, within thirty days of notification of closure, that the account remain open. A taxpayer may also request that the account remain open on an "active non-reporting" status if the requirements of subsection (3)(a) of this rule are met. The request shall be reviewed by the department and if found to be warranted, the department will immediately reopen the account. The following are acceptable reasons for continuing as an active account:

(a) The taxpayer is engaging in business activities in Washington which may result in tax liability.

(b) The taxpayer is required to collect or pay to the department of revenue a tax or fee which the department is authorized to administer and/or collect.

(c) The taxpayer has in fact been liable for excise taxes during the previous two years.

(15) **Reopening of taxpayer accounts.** A business person choosing to resume business activities for which the department of revenue is responsible for administering and/or collecting a tax or fee, may request a previously closed account be reopened. The business person must complete a new master application. When an account is reopened a new

registrations and licenses document, reflecting a current tax registration endorsement, shall be issued. Persons requesting the reopening of an account which had previously been closed due to a revocation action should refer to subsection (16) of this rule.

(16) **Revocation and reinstatement of tax registration endorsements.** Actions to revoke tax registration endorsements must be conducted by the department pursuant to the provisions of chapter 34.05 RCW, the Administrative Procedure Act, and the taxpayers bill of rights of chapter 82.32A RCW. Persons should refer to WAC 458-20-10001, Adjudicative proceedings—Brief adjudicative proceedings—Wholesale and retail cigarette license revocation/suspension—Certificate of registration (tax registration endorsement) revocation, for an explanation of the procedures and processes pertaining to the revocation of tax registration endorsements.

(a) The department of revenue may, by order, revoke a tax registration endorsement if any tax warrant issued under the provisions of RCW 82.32.210 is not paid within thirty days after it has been filed with the clerk of the superior court, or for any other reason expressly provided by law.

(b) The revocation order will be posted in a conspicuous place at the main entrance to the taxpayer's place of business and must remain posted until the tax registration endorsement has been reinstated. A revoked endorsement will not be reinstated until:

(i) The amount due on the warrant has been paid, or satisfactory arrangements for payment have been approved by the department; and

(ii) The taxpayer has posted with the department a bond or other security in an amount not exceeding one-half the estimated average annual liability of the taxpayer.

(c) It is unlawful for any taxpayer to engage in business after its tax registration endorsement has been revoked.

(17) **Penalties for noncompliance.** The law provides that any person engaging in any business activity, for which registration with the department of revenue is required, shall obtain a tax registration endorsement.

(a) The failure to obtain a tax registration endorsement prior to engaging in any taxable business activity constitutes a gross misdemeanor.

(b) Engaging in business after a tax registration endorsement has been revoked by the department constitutes a Class C felony.

(c) Any tax found to have been due, but delinquent, and any tax unreported as a result of fraud or misrepresentation, may be subject to penalty as provided in chapter 82.32 RCW, WAC 458-20-228 and 458-20-230.

[Statutory Authority: RCW 82.32.300. 00-01-069, § 458-20-101, filed 12/13/99, effective 1/13/00; 97-08-050, § 458-20-101, filed 3/31/97, effective 5/1/97; 95-07-089, § 458-20-101, filed 3/17/95, effective 4/17/95; 93-13-126, § 458-20-101, filed 6/22/93, effective 7/23/93; 86-12-015 (Order ET 86-11), § 458-20-101, filed 5/27/86; 83-07-032 (Order ET 83-15), § 458-20-101, filed 3/15/83; Order ET 73-1, § 458-20-101, filed 11/2/73; Order ET 71-1, § 458-20-101, filed 7/22/71; Order ET 70-3, § 458-20-101 (Rule 101), filed 5/29/70, effective 7/1/70.]

WAC 458-20-117 Sales and/or use of dunnage. (1) **Introduction.** This rule explains Washington's B&O tax, retail sales tax, and use tax to the sale or use of dunnage.

(a) The term "dunnage" means any material used for the purpose of protecting or holding in place cargo or freight during transportation by any carrier of property, and which is not an integral part of the carrier itself. Dunnage includes, but is not limited to, wood blocks, stakes, separating strips, timber, double decks, false floors, door shields, bulkheads, and other bracing. Dunnage generally does not remain with the cargo that is being transported and will not be delivered to the person who will ultimately receive the cargo. On the other hand, packing materials are generally part of the total package containing the cargo and are ultimately delivered to the customer as part of the cargo or merchandise.

(b) Persons selling dunnage to air, rail, or water carriers operating in interstate or foreign commerce should also refer to WAC 458-20-175. Persons selling or purchasing packing materials should refer to WAC 458-20-115 (Sales of packing materials and containers).

(2) **Business and occupation tax.** The B&O tax applies as follows to sales of dunnage.

(a) **Wholesaling.** The wholesaling tax applies to the gross proceeds derived from sales of dunnage to persons who resell the dunnage, without intervening use.

(b) **Retailing of interstate transportation equipment.** This B&O tax classification applies to sales of dunnage to air, rail, and water carriers. These sales are exempt from retail sales tax because of the provisions of RCW 82.08.0261.

(c) **Retailing.** The retailing tax applies to sales of dunnage to motor carriers and all other consumers.

(3) **Retail sales tax.** The retail sales tax generally applies to the sale of dunnage to consumers. This includes situations in which the purchaser may initially use the materials for dunnage and then resell the materials after they have served that purpose. RCW 82.08.0261 does provide a retail sales tax exemption for sales of tangible personal property, including dunnage, to air, rail, and water carriers operating in interstate or foreign commerce. To substantiate a claim for this exemption, the seller must retain as part of its records the completed exemption certificate(s) prescribed by WAC 458-20-175. However, air, rail, and water carriers are subject to use tax on dunnage used in Washington. (See below.)

(4) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(a) Air, rail, and water carriers engaged in interstate or foreign commerce should note that while the purchase of dunnage may qualify for the retail sales tax exemption provided by RCW 82.08.0261, the subsequent use in Washington of that dunnage is subject to use tax. These carriers should refer to WAC 458-20-175 to determine any potential use tax liability.

(b) Persons who manufacture the materials they will use for dunnage, such as lumber manufacturers, are subject to use tax on the value of the dunnage and are also subject to the manufacturing B&O tax. These persons should refer to WAC 458-20-136 and WAC 458-20-112.

(5) **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 facts and

circumstances. Unless stated otherwise, these examples presume both seller and purchaser are located in Washington.

(a) BCD, Inc. provides stevedoring services within the State of Washington. BCD routinely acquires lumber for use in securing cargo within the holds of ships during transport. While this lumber may be bolted or nailed to the ship, it is removed at the destination port when the cargo is off-loaded. BCD provides the lumber as a part of its overall stevedoring services, and does not make retail sales of the lumber to its customers.

BCD Inc. must pay retail sales tax when purchasing all such lumber. The lumber is used as dunnage and does not become an integral part of the ship, despite being bolted or nailed to the ship. If BCD has not paid retail sales tax on the acquisition of the lumber, it must remit the deferred sales or use tax directly to the department.

(b) D Company sells lumber and wood blocks to FG Engineering. FG is a manufacturer of equipment parts and uses the lumber and wood blocks as dunnage for the transportation of parts by rail to Montana. The lumber and wood blocks are salvaged and sold by FG after the transportation of the parts is completed.

The sale of the lumber and wood blocks to FG Engineering is a sale at retail, notwithstanding FG resells the dunnage materials in Montana. The use of the lumber and wood blocks as dunnage by FG Engineering is considered use as a consumer. D Company must collect and remit the retail sales tax, and report the gross proceeds of the sale under the retailing B&O tax classification.

(c) RB Lumber manufactures lumber in Washington which it ships by rail to customers in other states. RB Lumber takes irregular sized and other low quality lumber and uses it as dunnage in loading rail cars. Arrangements have been made with the rail carrier for the dunnage to be given away as firewood at the destination.

RB Lumber is subject to manufacturing B&O tax and also use tax on the value of the dunnage. If there is a comparable retail selling price for these materials, the value will be determined on that basis. If there is no comparable selling price, the value may be determined on the basis of cost of production as provided in WAC 458-20-112.

(d) KMB, Inc. sells lumber for use as dunnage to Western Rail, a common carrier operating by rail in multiple states. Some of the lumber will be first used in Washington and some will be transported to other states without intervening use for use in those states as dunnage. Western Rail may purchase the dunnage without payment of retail sales tax by giving the seller an exemption certificate as explained in WAC 458-20-175.

KMB, Inc. must report this sale under the retailing of interstate equipment B&O tax classification since Western Rail has claimed exemption for payment of the retail sales tax under RCW 82.08.0261. The seller must retain copies of the exemption certificates for five years. Western Rail must report use tax on the dunnage which is used in Washington.

[Statutory Authority: RCW 82.32.300, 00-01-068, § 458-20-117, filed 12/13/99, effective 1/13/00; 93-19-019, § 458-20-117, filed 9/2/93, effective 10/3/93; Order ET 70-3, § 458-20-117 (Rule 117), filed 5/29/70, effective 7/1/70.]

WAC 458-20-119 Sales of meals. (1) Introduction.

This rule explains Washington's B&O and retail sales tax applications to the sales of meals. This rule also gives tax reporting information to persons who provide meals without a specific charge. It explains how meals furnished to employees are taxed. Persons in the business of operating restaurants should also refer to WAC 458-20-124 and persons operating hotels, motels, or similar businesses should refer to WAC 458-20-166.

Retail sellers who are required by law to have a food and beverage service worker's permit under RCW 69.06.010 are subject to the retailing B&O tax and must collect and remit retail sales tax on sales of prepared food products, unless a specific exemption applies. For additional information regarding sales by persons required to have a food and beverage worker's permit, refer to WAC 458-20-244 (Food products).

(2) **Business and occupation tax.** The sales of meals and the providing of meals as a part of services rendered are subject to tax as follows:

(a) **Retailing.** The retailing B&O tax applies as follows.

(i) **Restaurants, cafeterias and other eating places.** Sales of meals to consumers by restaurants, cafeterias, clubs, and other eating places are subject to the retailing tax. (See WAC 458-20-124-Restaurants, etc.)

(ii) **Caterers.** Sales of meals and prepared food by caterers are subject to the retailing tax when sold to consumers. "Caterer" means a person who provides, prepares and serves meals for immediate consumption at a location selected by the customer. The tax liability is the same whether the meals are prepared at the customer's site or the caterer's site. The retailing tax also applies when caterers prepare and serve meals using ingredients provided by the customer. Persons providing a food service for others should refer to the subsection below entitled "Food service contractors."

(iii) **Hotels, motels, bed and breakfast facilities, resort lodges and other establishments offering meals and transient lodging.** Sales of meals by hotels, motels, and other persons who provide transient lodging are subject to the retailing tax.

(iv) **Boarding houses, American plan hotels, and other establishments offering meals and nontransient lodging.** Sales of meals by boarding houses and other such places are subject to retailing tax.

(A) Except for guest ranches and summer camps, when a lump sum is charged to non-transients for providing both lodging and meals, the fair selling price of the meals is subject to the retailing tax. Unless accounts are kept showing the fair selling price, the tax will be computed upon double the cost of the meals served. This cost includes the price paid for food and drinks served, the cost of preparing and serving meals, and all other incidental costs, including an appropriate portion of overhead expenses.

(B) It will be presumed that guest ranches and summer camps are not making sales of meals when a lump sum is charged for the furnishing of lodging, and meals are included.

(v) **Railroad, Pullman car, ship, airplane, or other transportation company diners.** Sales of meals by a railroad, Pullman car, ship, airplane, or other transportation com-

pany served at fixed locations in this state, or served upon the carrier itself while within this state, are subject to the retailing tax.

Where no specific charge is made for meals separate and apart from the transportation charge, the entire amount charged is deemed a charge for transportation and the retailing tax does not apply to any part of the charge.

(vi) **Hospitals, nursing homes, and other similar institutions.** The serving of meals by hospitals, nursing homes, sanitariums and similar institutions to patients as a part of the service rendered in the course of business by such institutions is not a sale at retail. However, many hospitals and similar institutions have cafeterias or restaurants through which meals are sold for cash or credit to doctors, visitors, nurses, and other employees. Some of these institutions have agreements where the employees are paid a fixed wage in payment for services rendered and are provided meals at no charge. Under those circumstances, all sales of meals to such persons are subject to the retailing tax, including the value of meals provided at no charge to employees. Refer to the subsection below entitled "Meals furnished to employees."

(vii) **School, college, or university dining rooms.** Public schools, high schools, colleges, universities, or private schools operating lunch rooms, cafeterias, dining rooms, or snack bars for the exclusive purpose of providing students and faculty with meals or prepared foods are not considered to be engaged in the business of making retail sales of meals. However, if guests are permitted to dine with students or faculty in such areas, the sales of meals to the guests are retail sales.

(A) Unless the eating area is situated so that it is available only to students and faculty, the lunch room, cafeteria, dining room, or snack bar must have a posted sign stating that the area is only open to students and faculty. In the absence of such a sign, there will be a presumption that the facility is not exclusively for the use of students and faculty. The actual policy in practice in these areas must be consistent with the posted policy.

(B) If the cafeteria, lunch room, dining room, or snack bar is generally open to the public, all sales of meals, including meals sold to students, are considered retail sales.

(C) For some educational institutions, the meals provided to students is considered to be part of the charge for tuition and may not be subject to the B&O tax. Public schools, high schools, colleges, universities, and private schools should refer to WAC 458-20-167 to determine whether the retailing B&O tax applies to the sales of meals described above. (See also WAC 458-20-189 for a discussion of B&O tax for schools operated by the state.)

(viii) **Fraternities and sororities.** Fraternities, sororities, and other groups of individuals who reside in one place and jointly share the expenses of the household including expense of meals are not considered to be making sales when meals are furnished to members.

(b) **Wholesaling-other.** Persons making sales of prepared meals to persons who will be reselling the meals are subject to the wholesaling-other tax classification. Sellers must obtain resale certificates from their customers to support the resale nature of any transaction. (See WAC 458-20-102.)

(c) **Service and other business activities.** Private schools, which do not meet the definition of "educational institutions," operating lunch rooms, cafeterias, or dining rooms for the exclusive purpose of providing meals to students and faculty are subject to the service and other business activities B&O tax on the charges to students and faculty for meals. (See WAC 458-20-167 for definitions of the terms "private school" and "educational institution.") Persons managing a food service operation for a private school should refer to the subsection below entitled "Food service contractors."

(3) **Retail sales tax.** The sales of meals, upon which the retailing tax applies under the provisions above, are generally subject to tax under the retail sales tax classification. However, a retail sales tax exemption is available for the following sales of meals:

(a) Prepared meals sold under a state-administered nutrition program for the aged as provided for in the Older Americans Act (Public Law 95-478 Title III) and RCW 74.38.040(6).

(b) Prepared meals sold to or for senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW. However, this exemption does not apply to purchases of prepared meals by not-for-profit organizations, such as hospitals, which provide the meals to patients as a part of the services they render.

(c) Prepared meals sold to the federal government. (See WAC 458-20-190.) However, meals sold to federal employees are taxable, even if the federal employee will be reimbursed for the cost of the meals by the federal government.

(4) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(a) Purchases of dishes, kitchen utensils, linens, and items which do not become an ingredient of the meal, are subject to retail sales tax.

(b) Retail sales tax or use tax applies to purchases of equipment, repairs, appliances, and construction.

(c) The retail sales or use tax does not apply to purchases of food or beverage products which are ingredients of meals being sold at retail or wholesale.

(d) Purchases of food products and prepared meals by persons who are not in the business of selling meals at retail or wholesale are subject to the retail sales tax. However, certain food products are statutorily exempt of retail sales or use tax. (See WAC 458-20-244.)

(e) Private schools, educational institutions, nursing homes, and similar institutions who are not making sales of meals at retail or wholesale are required to pay retail sales tax on all purchases of paper plates, paper cups, paper napkins, toothpicks, or any other articles which are furnished to customers, the first actual use of which renders such articles unfit for further use. However, purchases of such items by restaurants and similar businesses which are making retail or wholesale sales of meals are not subject to the retail sales or use tax.

(f) Transportation companies not segregating their charges for meals, and transporting persons for hire in interstate commerce, generally will be liable to their sellers for retail sales tax upon the purchase of the food supplies or pre-

pared meals to the extent that the meals will be served to passengers in Washington. Certain food items are statutorily exempt of retail sales or use tax. (See WAC 458-20-244.)

(5) **Food service contractors.** The term "food service contractor" means a person who operates a food service at a kitchen, cafeteria, dining room, or similar facility owned by an institution or business. Food service contractors may manage the food service operation on behalf of the institution or business, or may actually make sales of meals or prepared foods.

(a) Sales of meals. Food service contractors who sell meals or prepared foods to consumers are subject to the retailing B&O and retail sales taxes upon their gross proceeds of sales. For example, the operation of a cafeteria which provides meals to employees of a manufacturing or financial business is generally a retail activity. The food service contractor is considered to be making retail sales of meals, whether payment for the meal is made by the employees or the business, unless the business itself is reselling the meals to the employees.

In all cases where the meals are prepared at off-site facilities not owned by the institution or business, the food service contractor is considered to be making sales of meals and the retailing B&O and retail sales taxes apply to the gross proceeds of sale, or gross income for sales to consumers.

(b) Food service management. Effective July 1, 1998, the gross proceeds derived from the management of a food service operation are subject to the service and other business activities B&O tax. (Chapter 7, Laws of 1997.) For the period of July 1, 1993, through June 30, 1998, these proceeds were subject to the selected business services classification of the B&O tax. These tax reporting provisions apply whether the staff actually preparing the meals or prepared foods are employed by the institution or business hiring the food service contractor, or by the food service contractor itself. If the food service contractor merely manages the food service operation on behalf of an institution or business, that institution or business is considered to be selling meals or providing the meals as a part of the services the institution or business renders to its customers. These institutions and businesses should refer to the subsections (2) and (3) above to determine their B&O and retail sales tax liabilities.

Food service management includes, but is not limited to, the following activities:

(i) Food service contractors operating a cafeteria or similar facility which provides meals and prepared food for employees and/or guests of a business, but only where the business owning the facility is the one actually selling the meals to its employees.

(ii) Food service contractors managing and/or operating a cafeteria, lunch room, or similar facility for the exclusive use of students or faculty at an educational institution or private school. The educational institution or private school provides these meals to the students and faculty as a part of its educational services. The food service contractor is managing a food service operation on behalf of the institution, and is not making retail sales of meals to the students, faculty, or institution. Sales of meals or prepared foods to guests in such areas are, however, subject to the retailing B&O and retail

sales taxes. (Refer also to the subsection above entitled "School, college, or university dining rooms.")

(iii) Food service contractors managing and/or operating the dietary facilities of a hospital, nursing home, or similar institution, for the purpose of providing meals or prepared foods to patients or residents thereof. These meals are provided to the patients or residents by the hospital, nursing home, or similar institution as a part of the services rendered by the institution. The food service contractor is managing a food service operation on behalf of the institution, and is not considered to be making retail sales of meals to the patients, residents, or institution. Meals sold to doctors, nurses, visitors, and other employees through a cafeteria or similar facility are, however, subject to the retailing B&O and retail sales taxes. (Refer also to the subsection above entitled "Hospitals, nursing homes, and other similar institutions.")

(c) The following examples explain the application of the B&O and retail sales taxes to typical situations involving food service contractors managing a food service operation. 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.

(i) GC Inc. is a food service contractor managing and operating an on-site cafeteria for B College. This cafeteria is operated for the exclusive use of students and faculty. Guests of students or faculty members, however, are allowed to use the facilities. All monies collected in the cafeteria are retained by B College. College B pays GC's direct costs for managing and operating the cafeteria, including the costs of the unprepared food products, employee salaries, and overhead expenses. GC also receives a management fee.

GC Inc. is managing a food service operation. The measure of tax is the gross proceeds received from B College. GC Inc. may not claim a deduction on account of cost of materials, salaries, or any other expense. For periods prior to July 1, 1998, the gross proceeds are subject to the selected business services B&O tax. On and after July 1, 1998, these proceeds are subject to the service and other activities B&O tax classification. B College is considered to be making retail sales of meals to the guests and must collect and remit retail sales taxes on the gross proceeds of these sales. B College should refer to WAC 458-20-167 to determine whether the retailing B&O tax applies.

(ii) DF Food Service contracts with Hospital A to manage and operate Hospital A's dietary and cafeteria facilities. DF is to receive a per meal fee for meals provided to Hospital A's patients. DF Food Service retains all proceeds for sales of meals to physicians, nurses, and visitors in the cafeteria.

The gross proceeds received from Hospital A in regards to the meals provided to the patients is derived from the management of a food service operation. For periods prior to July 1, 1998, these proceeds are subject to the selected business services B&O tax. On and after July 1, 1998, these proceeds are subject to the service and other activities B&O tax classification. DF, however, is making retail sales of meals to physicians, nurses, and visitors in the cafeteria. DF Food Service must pay retailing B&O, and collect and remit retail sales tax, on the gross proceeds derived from the cafeteria sales.

(6) **Meals furnished to employees.** Sales of meals to employees are sales at retail and subject to the retailing B&O

and retail sales taxes. This is true whether individual meals are sold, whether a flat charge is made, or whether meals are furnished as a part of the compensation for services rendered.

(a) Where a specific and reasonable charge is made to the employee, the measure of the tax is the selling price.

(b) Where no specific charge is made, the measure of the tax will be the average cost per meal served to each employee, based upon the actual cost of the food.

(c) It is often impracticable to collect the retail sales tax from employees on such sales. The employer may, in lieu of collecting such tax from employees, pay the tax directly to the department of revenue.

(d) Where meals furnished to employees are not recorded as sales, the tax due shall be presumed to apply according to the following formula for determining meal count:

(i) Those employees working shifts up to five hours, one meal; and

(ii) Employees working shifts of more than five hours, two meals.

(7) **Sales of meals, beverages, and food at prices including sales tax.** Persons who advertise and/or sell meals, alcoholic or other beverages, or any kind of food products upon which retail sales tax is due should refer to WAC 458-20-244 (Food products), WAC 458-20-124 (Restaurants, etc.), and WAC 458-20-107 (Advertised prices including sales tax). The taxability of persons operating class H licensed restaurants is specifically addressed in WAC 458-20-124.

(8) **Gratuities.** Tips or gratuities representing donations or gifts by customers under circumstances which are clearly voluntary are not part of the selling price subject to tax. However, mandatory additions to the price by the seller, whether labeled service charges, tips, gratuities, or otherwise must be included in the selling price and are subject to both the retailing classification of the B&O tax and the retail sales tax.

(9) **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 results of other situations must be determined after a review of all facts and circumstances.

(a) ABC Hospital operates a cafeteria and sells meals to physicians and to persons who are visiting patients in the hospital. Meals are also provided to its employees at no charge. However, there is no accounting for the number of meals consumed by the employees. Payroll records do record the number of hours worked. On average, employees working shifts of up to five hours consume one meal while those working shifts of more than five hours consume two meals.

ABC Hospital is subject to retailing and retail sales taxes on the gross proceeds derived from the sales of meals to physicians and visitors. The retailing and retail sales taxes also apply to the value of meals consumed by ABC's employees. The value subject to tax is determined by the average cost of meals consumed by the employees, based upon the actual cost of the food items, multiplied by the number of meals as determined through a review of the payroll records. While the presumption is that employees working shifts of up to five hours consume one meal with those working shifts of five to

eight hours consuming two, this presumption may be rebutted under particular circumstances.

(b) X operates a boarding house and provides lodging and meals to ten non-transient residents. Each resident is charged a lump sum to cover both lodging and meals with no accounting for a fair selling price for the meals. X is making retail sales of meals to its residents. Retailing and retail sales taxes are due on the value of the meals served. This value must be computed as double the cost of the meal, including the cost of the food and drink ingredients, costs of meal preparation, and other costs associated with the meal preparation such as overhead expenses.

(c) Y Motor Inn contracts with Z Company to provide catering services for a function to be held at the motor inn. During discussions concerning the services to be provided, Z Company is informed that a 15% gratuity is generally recommended. Z Company negotiates the gratuity percentage to 10% and signs a catering contract stating that the agreed gratuity will be added. The gratuity charged to Z Company is subject to both the retailing B&O and retail sales taxes. This is not a voluntary gratuity since it is required to be paid as a condition of the contract. Gratuities are not part of the selling price only when they are strictly voluntary.

[Statutory Authority: RCW 82.32.300, 99-11-107, § 458-20-119, filed 5/19/99, effective 6/19/99; 93-23-019, § 458-20-119, filed 11/8/93, effective 12/9/93; 86-03-016 (Order ET 86-1), § 458-20-119, filed 1/7/86; 82-16-061 (Order ET 82-7), § 458-20-119, filed 7/30/82. Statutory Authority: RCW 82.01.060(2) and 82.32.300, 78-07-045 (Order ET 78-4), § 458-20-119, filed 6/27/78; Order ET 74-1, § 458-20-119, filed 5/7/74; Order ET 70-3, § 458-20-119 (Rule 119), filed 5/29/70, effective 7/1/70.]

WAC 458-20-131 Games of chance. (1) Introduction.

This rule explains the business and occupation (B&O), retail sales, and use tax reporting requirements of persons operating pull-tab and punch board games. It also explains the application of tax to persons conducting amusement games, card games, bingo games, and raffles. Nonprofit organizations conducting these games as a part of their fund-raising activities should also refer to RCW 82.04.3651, 82.08.02573, and WAC 458-20-169 (Religious, charitable, benevolent, nonprofit service organizations, and sheltered workshops) to determine if a B&O, retail sales, or use tax exemption is available for their activities.

Persons operating or selling these types of games should also be aware that the Washington state gambling commission regulates these activities. These persons should refer to chapter 9.46 RCW (Gambling—1973 Act), Title 230 WAC (Gambling commission), and/or contact the Washington state gambling commission with any questions regarding their licensing and reporting responsibilities with the commission.

(2) **Measure of tax.** The business and occupation (B&O) and retail sales taxes apply to income as described below. These guidelines apply equally whether the game is mechanically or electronically operated.

(a) **Pull-tab, punch board, and bingo games.** Persons operating pull-tab, punch board, or bingo games are taxable under the service and other activities B&O tax classification upon all "increases" arising from the conduct of such games. The term "increases" as used in this subsection, means gross gambling receipts less the monetary value or, in the case of merchandise, the actual cost, of any prizes that are awarded.

The actual cost of the merchandise is the amount actually paid by the operator without any markup. In the case of donated merchandise, the operator may deduct the fair-market value of the merchandise. While the cost of merchandise prizes may be deducted, other costs of operating the game, including the amount paid for the purchase of the actual game (e.g., a punch board), may not be deducted.

Prior to April 1, 1999, operators of pull-tab and punch board games awarding merchandise as prizes were considered to be selling the prizes for the gross income derived from the games. As a result, this income was subject to the retailing B&O and retail sales taxes.

(b) **Card games.** The fees charged to card players as a condition for their participation in card games, whether the fees are based on time, on a per-hand basis, or on a percentage of the wagered amount (commonly referred to as a "rake"), are subject to the service and other activities B&O tax. In those cases where the operator of the card room participates in the card game as a house or central bank, the measure of tax is the amount of winnings less the amount of losses.

(c) **Raffles.** Effective April 1, 1999, persons conducting raffles are subject to the service and other activities B&O tax upon all "increases" (as defined in subsection (2)(a) above) arising from the conduct of the raffles. Prior to this date, the measure of tax was the gross income from the sale of raffle tickets or chances without any deduction for the value or cost of any prizes awarded.

(d) **Amusement games.** The gross receipts derived from the operation of amusement games as defined in RCW 9.46.0201 are subject to the service and other activities B&O tax. The cost of any prizes awarded may not be deducted from the measure of tax.

(i) RCW 9.46.0201 defines amusement games to be a game played for entertainment in which:

- (A) The contestant actively participates;
- (B) The outcome depends in a material degree upon the skill of the contestant;
- (C) Only merchandise prizes are awarded; and
- (D) The outcome is not in the control of the operator.

(ii) Crane machines, coin-toss and dart-toss games at fairs and carnivals, and skill-stop games are examples of games qualifying as amusement games under RCW 9.46.0201. Persons operating coin-operated games that do not qualify under the definition of amusement games in RCW 9.46.0201 (e.g., pinball, video, and pool games) should refer to WAC 458-20-187 (Coin-operated vending machines, amusement devices and service machines) for an explanation of their tax reporting responsibilities.

(e) **Sales of foods and beverages.** Sales of foods, beverages, and other tangible personal property by persons operating or conducting any of the activities described above are retail sales and subject to the retailing B&O and retail sales taxes, unless a specific exemption applies (e.g., see WAC 458-20-124 regarding sales of food and beverages by restaurants, taverns, and similar businesses and WAC 458-20-244 for exemptions available for certain food products). Persons conducting dice games to determine the amount that the customer will pay for food or beverages are subject to tax upon the amount the customer actually pays for the food or drink.

(3) **Merchandise prizes.** Persons operating or conducting any of the activities described in subsection (2)(a) through (d) of this rule are the consumers of any merchandise delivered to the players in the form of prizes or awards. Purchases of this merchandise are purchases at retail and subject to the retail sales tax, unless a specific exemption applies (e.g., see WAC 458-20-244 for exemptions available for certain food products). Purchases of supplies, devices, and other equipment used in the conduct of these games are also subject to the retail sales tax.

(a) If retail sales tax is not collected by the seller, the person conducting these games must remit the retail sales tax (often referred to as deferred retail sales tax) or use tax directly to the department. See also WAC 458-20-178 (Use tax).

(b) Prior to April 1, 1999, operators of punch board and pull-tab games awarding merchandise as prizes were considered to be selling the prizes for the gross income derived from the games. The purchase of the merchandise prizes by the operators of these games were purchases at wholesale and not subject to either the retail sales or use tax.

For the purposes of determining the taxability of merchandise prizes awarded by operators of punch board and pull-tab games that were in operation both before and after April 1, 1999, the operator should remit retail sales or use tax on the value of the prizes awarded on or after April 1, 1999.

[Statutory Authority: RCW 82.32.300, 99-08-090, § 458-20-131, filed 4/6/99, effective 5/7/99; 83-07-034 (Order ET 83-17), § 458-20-131, filed 3/15/83; Order ET 70-3, § 458-20-131 (Rule 131), filed 5/29/70, effective 7/1/70.]

WAC 458-20-157 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-20-165 Laundries, dry cleaners, self-service laundries and dry cleaners. (1) **Introduction.** This rule discusses the application of the business and occupation (B&O), retail sales, and use taxes to laundries, dry cleaners, pickup and delivery services, and self-service laundries and dry cleaners. Persons selling laundry and/or dry cleaning services are generally making retail sales, except when making sales to nonprofit health care facilities or providing coin-operated laundry facilities in apartment houses, rooming houses, or mobile home parks. RCW 82.04.050.

(2) **Definitions.** The following definitions apply to this rule.

(a) A "laundry or dry cleaning business" includes operating a plant or establishment, or contracting with others, for laundering, cleaning, dyeing, pressing, and incidentally repairing such articles as clothing, linens, bedding, towels, curtains, drapes, and rugs. Laundry or dry cleaning businesses include self-service businesses which provide coin-operated and noncoin-operated laundry or dry cleaning facilities. This term also includes pickup and delivery laundry services performed by persons operating in their own respective names and not as commissioned agent for another laundry business.

(b) A "laundry or linen supply service" is the activity of providing customers with a supply of items such as clean linen, uniforms, and towels, whether ownership of such prop-

erty is in the person operating the laundry or linen supply service or in the customer. The term includes supply services operating their own cleaning establishments as well as those contracting with other laundry or dry cleaning businesses.

(c) "Nonprofit health care facilities" means facilities operated by nonprofit organizations providing diagnostic, therapeutic, convalescent, or preventive inpatient or outpatient health care services. The term includes, but is not limited to, nonprofit hospitals, nursing homes, and hospices.

(3) **Business and Occupation Tax.** Business and occupation tax applies as follows.

(a) **Retailing.** Persons operating laundry or dry cleaning businesses are generally taxable under the retailing classification upon the gross proceeds of sales, without any deduction on account of commissions allowed or amounts paid to another for the performance of all or part of the laundry or dry cleaning service rendered.

The gross proceeds of sales include charges for cleaning and for sales of soap, bleach, fabric softener, laundry bags, hangers, and other tangible personal property to consumers. Charges for alterations are also subject to the retailing classification. See "retail sales tax" below for a more detailed explanation of the charges included in the retailing classification.

(b) **Wholesaling.** Tax is due under the wholesaling classification upon the gross proceeds of sales derived from laundry or dry cleaning services rendered for other laundry and dry cleaning businesses. The laundry or dry cleaning business purchasing these services should provide a resale certificate to the seller. See WAC 458-20-102 (Resale certificates).

(c) **Service and other activities.** Effective June 11, 1998, any person making sales of laundry services to a nonprofit health care facility is taxable under the service and other activities B&O classification on the gross income received for such services. For the period of July 1, 1993-June 10, 1998, the service and other activities B&O tax applied only to sales of laundry services to members by nonprofit associations composed exclusively of nonprofit hospitals.

(i) Effective July 1, 1998, the service and other activities B&O tax applies to charges for the use of coin-operated laundry facilities in apartment houses, rooming houses, or mobile home parks which are provided for the exclusive use of tenants. Chapter 275, Laws of 1998. Prior to this date these charges were considered a retail sale.

(ii) Persons who collect and distribute laundry or dry cleaning as a commissioned agent for one or more laundry or dry cleaning businesses, and who act as an independent contractor rather than as an employee, are liable for service B&O tax on their gross commissions. See WAC 458-20-159 for the recordkeeping requirements for showing agency status.

(4) **Retail Sales Tax.** Laundry and dry cleaning businesses, including self-service or coin-operated laundries or dry cleaners, and laundry or linen supply services are required to collect the retail sales tax upon the total charge made to the consumer for laundry and dry cleaning service or laundry or linen supply service.

(a) Persons in Washington who provide laundry or linen supply services are making retail sales in this state even though their customers may be located outside this state.

Gross income from such services is subject to tax because the charge is for laundering which takes place in this state, rather than being a true rental of property (e.g., uniforms, linen, and towels) to nonresidents. Conversely, persons located outside the state of Washington who provide laundry or linen supply services to consumers in this state are not making retail sales in this state. The laundering service is performed outside Washington state and is exempt from Washington's B&O and retail sales taxes.

(b) Prior to July 1, 1998, charges made for the use of coin-operated laundry facilities provided for the exclusive use of tenants in apartment houses, rooming houses, or mobile home parks were retail sales. This income is subject to the service and other activities B&O tax effective July 1, 1998. (Chapter 275, Laws of 1998.) Charges for the use of coin-operated laundry facilities in hotels, motels, trailer camps, and other locations providing lodging or camping facilities to transients remain subject to the retail sales tax.

(c) Laundry and dry cleaning businesses providing services through commissioned agents should collect and remit the retail sales tax to the department.

(i) If the agent is a hotel or an apartment house billing guests or tenants for laundry or dry cleaning services, the hotel or apartment house should collect the retail sales tax on the total charge for the laundry or dry cleaning and remit the payment to the laundry or dry cleaning business. The laundry or dry cleaning business is responsible for remitting the tax to the department.

(ii) If the agent is a commissioned driver, the laundry or dry cleaning business can bill the customer directly for the services or the driver can collect the payment from the customer and remit the payment to the laundry or dry cleaning business. In either case, the retail sales tax must be collected on the total charge made to the customer and the laundry or dry cleaning business is responsible for remitting the tax to the department.

(d) In most cases the retail sales tax must be stated separately from the selling price or collected separately from the buyer. (See RCW 82.08.050.) An exception is made for coin-operated sales. The seller may deduct the tax from the total amount received in coin-operated machines to arrive at the net amount which becomes the measure of the tax.

(e) In general, the place of sale for purposes of local sales tax is the place the laundry or dry cleaning services are performed. See WAC 458-20-103 and 458-20-145.

(i) If a laundry or dry cleaning business contracts with another laundry or dry cleaning business to do the cleaning, the place of sale is the location of the laundry or dry cleaning business used by the customer to drop off and pickup the laundry.

(ii) If a laundry or dry cleaning business uses a commissioned agent such as a hotel, an apartment house, or a commissioned driver for pickup and delivery of the articles to be cleaned, the place of sale is the location of the laundry or dry cleaning business which does the cleaning.

(f) Sales to laundries or dry cleaning businesses and laundry or linen supply services of soaps, cleaning solvents, and other articles or substances consumed in rendering a laundry, laundry supply or cleaning service are retail sales and are subject to the retail sales tax. Retail sales tax also

applies to sales of equipment such as washing machines, irons, and furniture, and supplies such as hand tools, sewing notions, scissors, spotting brushes, and stationery.

(g) Sales to laundry and dry cleaning businesses of dyes, fabric softeners, starches, sizing, and similar articles or substances, which become ingredients of the articles cleaned, are generally sales at wholesale and are not subject to the retail sales tax. Similarly, sales to persons operating laundry or linen supply services of linen, uniforms, towels, cabinets, hand soap, and similar property rented or supplied to customers as a part of the service rendered are generally wholesale sales.

Persons selling laundry services to nonprofit health care facilities are considered consumers of all items used in providing such services. RCW 82.04.190 (2)(a). As a result, sales of items such as dyes, fabric softeners, linens, and uniforms to these persons are retail sales and subject to the retail sales tax.

(h) Sales to self-service or coin-operated laundries of any items the laundries give to their customers are retail sales. Sales of soap, bleach, fabric softener or other supplies to self-service or coin-operated laundries for resale to their customers are wholesale sales. A sale is for resale if the self-service business sells the supplies to customers separate from the charge for the use of the laundry appliances. The laundry or dry cleaning business should provide a resale certificate to the seller as provided in WAC 458-20-102.

(5) **Deferred Sales or Use Tax.** With respect to purchases by laundries or dry cleaning businesses and laundry or linen supply services, if the seller fails to collect the appropriate retail sales tax, the buyers are required to pay the retail sales tax (commonly referred to as the "deferred sales tax") or use tax to the department.

[Statutory Authority: RCW 82.32.300. 99-13-052, § 458-20-165, filed 6/9/99, effective 7/10/99. Statutory Authority: RCW 82.32.300 and 82.04.050. 94-09-016, § 458-20-165, filed 4/13/94, effective 5/14/94. Statutory Authority: RCW 82.32.300. 83-07-033 (Order ET 83-16), § 458-20-165, filed 3/15/83; Order ET 73-1, § 458-20-165, filed 11/2/73; Order ET 70-3, § 458-20-165 (Rule 165), filed 5/29/70, effective 7/1/70.]

WAC 458-20-167 Educational institutions, school districts, student organizations, and private schools. (1) Introduction. This section explains the application of Washington's business and occupation (B&O), retail sales, and use taxes to educational institutions, school districts, student organizations, and private schools. It also gives tax reporting information to persons operating nursery schools, preschools, or providing child care. Educational institutions which are institutions of the state of Washington should also refer to WAC 458-20-189 (Sales to and by the state of Washington, etc.). Nonprofit organizations should also refer to WAC 458-20-169 (Religious, charitable, benevolent, nonprofit service organizations, and sheltered workshops).

(2) **Definitions.** For the purposes of this section, the following definitions apply:

(a) The term "tuition fees" includes fees for instruction, library, laboratory, and health services. The term also includes special fees and amounts charged for room and board when the property or service for which such charges

are made is furnished exclusively to the students, teachers, or other staff of the institution.

(b) "Educational institutions" means the following:

(i) Institutions which are established, operated, and governed by this state or its political subdivisions under Title 28A (Common school provisions), 28B (Higher education), or 28C (Vocational education) RCW.

(ii) Nonpublic schools, including parochial or independent schools or school districts, carrying out a program for any or all of the grades one through twelve, which have been approved by the Washington state board of education. (See also chapter 180-90 WAC.)

(iii) Degree-granting institutions offering educational credentials, instruction, or services prerequisite to or indicative of an academic or professional degree or certificate beyond the secondary level, provided the institution is accredited by an accrediting association recognized by the United States Secretary of Education and offers to students an educational program of a general academic nature. Degree-granting institutions should refer to chapter 28B.85 RCW for information about the requirement for authorization by the Washington higher education coordinating board.

(iv) Institutions which are not operated for profit, and which are privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture.

(v) Programs that an educational institution cosponsors with a nonprofit organization, as defined by the Internal Revenue Code Sec. 501 (c)(3), provided that educational institution grants college credit for course work successfully completed through the educational program.

(vi) Certain branch campuses of foreign degree-granting institutions, provided the following requirements, among others, are satisfied:

(A) The branch campus must be owned and operated directly by a foreign degree-granting institution or indirectly through a Washington profit or nonprofit corporation in which the foreign degree-granting institution is the sole or controlling shareholder or member;

(B) Courses must be provided solely and exclusively to students enrolled in a degree-granting program offered by the institution;

(C) The branch campus must be approved by the Washington higher education coordinating board to operate in this state; and

(D) The branch campus must be recognized to be exempt from income taxes pursuant to 26 U.S.C. Sec. 501(c).

(vii) "Educational institutions" does not include any entity defined as a "private vocational school" under chapter 28C.10 RCW and/or any entity defined as a "degree-granting private vocational school" under chapters 28C.10 and 28B.85 RCW (other than those described in (b)(iv) of this subsection).

(c) "Private schools" means all schools and institutions which are excluded from the above definition of "educational institutions." For example, an elementary school operated by a church organization is a "private school" if the school is not approved. It will be given the tax treatment of an "educational institution" for purposes of this section only if it has obtained approval from the Washington state board of education.

(3) **Business and occupation tax.** Departments and institutions of the state of Washington are not subject to the B&O tax. (See WAC 458-20-189.) School districts are also not subject to the B&O tax, except as to income derived from a public utility or enterprise activity. RCW 82.04.419. Private schools, student organizations, school districts engaging in utility or enterprise activities, and educational institutions which are not departments or institutions of the state of Washington are subject to the B&O tax as follows:

(a) **Service and other business activities.** The service B&O tax applies to the following nonexclusive list of activities or sources of income:

(i) Tuition fees received by private schools. However, educational institutions, as defined above, may deduct amounts derived from tuition fees. RCW 82.04.4282.

(ii) Rental of conference facilities to various organizations or groups.

(iii) Rental by private schools of dormitories or other student lodging facilities which are not generally available to the public and where the student does not have an absolute right of control and occupancy. (See WAC 458-20-118.) However, educational institutions may deduct the income from charges for lodging made to students. These amounts are defined by law as being tuition.

(iv) Amounts received by private schools for providing meals to students where the meals are provided exclusively for students, teachers, staff, and their guests. However, refer to the comments under retailing for the taxability of meals sold to guests of students. Income from providing meals to students by educational institutions is deductible.

(v) Amounts received from owners of coin operated vending machines or amusement devices for allowing the placement of those machines on the premises of the school. (Refer also to WAC 458-20-187.)

(b) **Retailing.** Activities and sources of income subject to the retailing B&O tax include, but are not limited to, the following:

(i) Sales of tangible personal property or services classified as retail sales. This includes sales of books and supplies to students where these materials are not supplied as part of the tuition charge. Sales of academic transcripts are exempt from tax. RCW 82.04.399.

(ii) Sales of meals to guests of students.

(iii) Sales of meals or prepared foods in facilities which are generally open to the public, including those sold to students. (See also WAC 458-20-119.)

(4) **Retail sales tax.** The retail sales tax applies to all retail sales including, but not limited to, those identified in subsection (3) of this section, unless a specific statutory exemption applies.

(a) Educational institutions, school districts, student organizations, and private schools, including departments or institutions of the state of Washington, are required to collect the retail sales tax on sales of tangible personal property and retail services to consumers, even though such sales may be exempt from the retailing B&O tax. Retail sales tax exemptions are provided for sales of academic transcripts (RCW 82.08.2537) and certain food products (RCW 82.08.0293 and 82.08.0297, and WAC 458-20-244).

(b) Amounts derived from charges between departments or institutions of the state of Washington, or between departments of the same entity, constitute interdepartmental charges and are not subject to the retailing or retail sales tax. (See WAC 458-20-201 and 458-20-189.)

(c) Persons selling merchandise through vending machines should refer to WAC 458-20-187.

(5) **Deferred sales or use tax.** Educational institutions, school districts, student organizations, and private schools are required to report the deferred sales or use tax upon the use of all tangible personal property purchased or acquired under conditions whereby the Washington retail sales tax has not been paid, unless a specific statutory exemption applies. If items are purchased for dual purposes (i.e., for both consumption and resale), a tax paid at source deduction may be claimed for the cost of the articles resold upon which retail sales tax was previously paid. (See WAC 458-20-102.)

(a) These organizations are the consumers of food or beverage products which are ingredients of meals that are furnished to students and faculty. However, certain food products are exempt from the retail sales and/or use tax. RCW 82.12.0293 and 82.12.0297, and WAC 458-20-244.

(b) Use tax exemptions are also provided for the following:

(i) Academic transcripts. RCW 82.12.0347.

(ii) Computers, computer components, computer accessories, or computer software irrevocably donated to any public or private nonprofit school or college in this state, as defined by chapter 82.36 RCW. For the purposes of this exemption, RCW 82.12.0284 defines "computer" as a data processor that can perform substantial computation, including numerous arithmetic or logic operations, without intervention by a human operator. This exemption is available to both the donor and the private nonprofit school or college receiving the donation.

(iii) Tangible personal property donated to a nonprofit charitable organization or state or local governmental entity. RCW 82.12.02595. Prior to June 11, 1998, this exemption is available only to the nonprofit charitable organization or state or local governmental entity receiving the donation. On and after June 11, 1998, the following are also exempt from the use tax:

(A) The subsequent use of the property by a person to whom the property is donated or bailed by the nonprofit charitable organization, or state or local governmental entity, if used to further the purpose of that organization; and

(B) The donation of tangible personal property without intervening use to a nonprofit charitable organization, or the incorporation of tangible personal property without intervening use into real or personal property of or for a nonprofit charitable organization in the course of installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating the real or personal property for no charge. Chapter 182, Laws of 1998.

(iv) Motor vehicles equipped with dual controls loaned to and exclusively used by a school in connection with the school's driver training program. This exemption is available to both the donor and the school receiving the donation. For the purposes of this exemption, RCW 82.12.0264 limits the term "school" to:

(A) The University of Washington, Washington State University, the regional universities, The Evergreen State College, and the state community colleges;

(B) Any public, private, or parochial school accredited by either the state board of education or by the University of Washington (the state accrediting station); or

(C) Any public vocational school meeting the standards, courses, and requirements established and prescribed or approved in accordance with the Community College Act of 1967.

(6) **Nursery schools, preschools, child care providers, privately operated kindergartens, and persons monitoring home child care facilities.** Income received by nursery schools, preschools, child care providers, and privately operated kindergartens for the care or education of children who are under eight years of age and not enrolled in or above the first grade is exempt from the B&O tax. RCW 82.04.4282. Such persons are, however, subject to B&O tax upon the gross proceeds derived from providing child care to children who are eight years of age or older or enrolled in or above the first grade.

Effective July 1, 1998, persons providing child care for periods of less than twenty-four hours are subject to tax under the child care B&O classification. RCW 82.04.2905. The service and other activities B&O tax classification applied to these services prior to July 1, 1998, and continues to apply to child care services provided for periods in excess of twenty-four hours. Nursery schools, preschools, and child care providers receiving both taxable and exempt income must properly segregate such income in their books of account.

(a) The B&O tax does not apply to income derived by a church for the care of children of any age for periods of less than twenty-four hours, provided the church is exempt from property tax under RCW 84.36.020. RCW 82.04.339.

(b) Persons who monitor home child care facilities under one or more federal nutrition programs are required to register with the department and are taxable on their gross income under the service and other classification of the B&O tax. These monitors contract with, and are accountable to the superintendent of public instruction which receives funds from the United States Department of Agriculture and disburses funds to each monitor. Commonly, a portion of the funds received by the monitor is required by law to be passed directly to the home child care facilities for the provision of qualifying meals. That portion of the funds received by the monitor may be taken as a "reimbursement" deduction on the monitor's combined excise tax return, so that the monitor is subject to B&O tax only on the portion of funds retained for the rendering of services.

(7) **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 results of other situations must be determined after a review of all of the facts and circumstances.

(a) MN University is an educational institution created by the state of Washington. MN University operates a book store at which it sells text books, school supplies, and apparel to students and nonstudents. As an institution of the state of Washington, MN University is exempt from the B&O tax with respect to all sales, irrespective that sales are made to

nonstudents. However, MN is required to collect and remit retail sales tax on its gross proceeds of sales made through its book store.

(b) DMG College is a degree-granting institution accredited by an accrediting association recognized by the United States Secretary of Education. DMG College is an educational institution operated by a church. DMG makes charges to its students for tuition, meals, and lodging. It also receives income for occasionally providing lodging and meals to guests of its students during the year. DMG also rents its conference and dormitory facilities to various groups during the summer, providing cafeteria services when needed. The income from tuition, meals, and lodging received from the students is exempt of B&O and retail sales tax because this entity comes within the definition of an educational institution. DMG must report the retailing B&O tax and collect and remit retail sales tax upon the gross proceeds derived from the sales of meals and prepared foods to the conference attendees and guests. The income derived from the rental of the conference and dormitory facilities to various groups and student guests is subject to the service B&O tax. The college is not considered as holding itself out for the sale of lodging to the general public.

(c) JB College is an educational institution which is not a department or institution of the state of Washington. JB College has converted five housing units from student use for use by nonstudents. Guests of the administration use these units for stays of two or three days, and are charged a specific amount per night. The college provides linen, towels, etc., to the users. These units are always rented for periods under thirty days. JB College must report this rental income under the retailing B&O tax and collect and remit retail sales tax. This income is not derived from the occasional rental of student lodging facilities, but is derived from the rental of accommodations specifically maintained for public use.

(d) Jane Doe operates a private preschool and kindergarten, providing care and elementary education for children. She also provides after hours child care. Jane Doe may claim a deduction for the income received for the care and education of children under eight years old and not enrolled in or above the first grade, provided this income is properly segregated in her books of account. The income attributable to the care of children at or above the first grade level, i.e., eight years old or enrolled in or above the first grade, is subject to the child care B&O tax. Jane Doe may be able to reduce or eliminate any child care B&O tax liability if she qualifies for the small business B&O tax credit. RCW 82.04.4451 and WAC 458-20-104.

[Statutory Authority: RCW 82.32.300, 99-03-005, § 458-20-167, filed 1/7/99, effective 2/7/99; 94-07-047, § 458-20-167, filed 3/10/94, effective 4/10/94; 83-07-032 (Order ET 83-15), § 458-20-167, filed 3/15/83; Statutory Authority: RCW 82.01.060(2) and 82.32.300, 78-07-045 (Order ET 78-4), § 458-20-167, filed 6/27/78; Order ET 70-3, § 458-20-167 (Rule 167), filed 5/29/70, effective 7/1/70.]

WAC 458-20-195 Taxes, deductibility. (1) Introduction. This rule explains the circumstances under which taxes may be deducted from the gross amount reported as the measure of tax under the business and occupation tax, retail sales tax, and public utility tax. It also lists deductible and non-deductible taxes.

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(2) **Deductibility of taxes.** In computing tax liability, the amount of certain taxes may be excluded or deducted from the gross amount reported as the measure of tax under the business and occupation (B&O) tax, the retail sales tax, and the public utility tax. These taxes may be deducted provided they have been included in the gross amount reported under the classification with respect to which the deduction is sought, and have not been otherwise deducted through inclusion in the amount of an allowable deduction taken under such classification for another reason, e.g., interstate commerce.

The amount of taxes which are not allowable as deductions or exclusions must in every case be included in the gross amount reported. License and regulatory fees are not deductible. Questions regarding the deductibility or exclusion of a tax that is not specifically identified in this rule should be submitted to the department of revenue for determination.

(3) **Motor vehicle fuel taxes.** RCW 82.04.4285 provides a B&O tax deduction for certain state and federal motor vehicle fuel taxes when the taxes are included in the sales price. These taxes include:

State motor vehicle fuel tax	chapter 82.36 RCW;
State special fuel tax	chapter 82.38 RCW;
Federal tax on diesel and special motor fuels	26 U.S.C.A. Sec. 4041;
Federal tax on inland waterway commercial fuel	26 U.S.C.A. Sec. 4042;
Federal tax on gasoline and diesel fuel	26 U.S.C.A. Sec. 4081.

(4) **Taxes collected as an agent of the state or the federal government.** The amount of taxes collected by a taxpayer, as agent for the state of Washington or its political subdivisions, or for the federal government, may be deducted from the gross amount reported. These taxes are deductible under each tax classification of the Revenue Act under which the gross amount from such sales or services must be reported.

This deduction applies only where the amount of such taxes is received by the taxpayer as collecting agent and is paid by the agent directly to the state, its political subdivisions, or to the federal government. When the taxpayer is the person upon whom a tax is primarily imposed, no deduction or exclusion is allowed, since in such case the tax is a part of the cost of doing business. The mere fact that the amount of tax is added by the taxpayer as a separate item to the price of goods sold, or to the charge for services rendered, does not in itself, make such taxpayer a collecting agent for the purpose of this deduction. Examples of deductible taxes include:

FEDERAL—

Tax on telegraph, telephone, radio and cable messages	26 U.S.C.A. Sec. 4251;
Tax on transportation of persons	26 U.S.C.A. Sec. 4261;
Tax on transportation of property	26 U.S.C.A. Sec. 4271;

STATE—

Leasehold excise tax collected from lessees chapter 82.29A RCW;
 Retail sales tax collected from buyers chapter 82.08 RCW;
 Use tax collected from buyers chapter 82.12 RCW.

(5) **Specific taxes which are not deductible.** Examples of specific taxes which may be neither deducted nor excluded from the measure of the tax include the following:

FEDERAL—

A.A.A. compensating tax 7 U.S.C.A. Sec. 615(e);
 A.A.A. processing tax 7 U.S.C.A. Sec. 609;
 Aviation fuel 26 U.S.C.A. Sec. 4161;
 Employment taxes 26 U.S.C.A. chapter 21-25;
 Estate taxes 6 U.S.C.A. chapter 11;
 Firearms, shells and cartridges 26 U.S.C.A. Sec. 4181;
 Gift taxes 26 U.S.C.A. chapter 12;
 Importers, manufacturers and dealers in firearms 6 U.S.C.A. Sec. 5801;
 Income taxes 26 U.S.C.A. Subtitle A;
 Insurance policies issued by foreign insurers 26 U.S.C.A. Sec. 4371;
 Liquor taxes 6 U.S.C.A. chapter 51;
 Sale and transfer of firearms tax 26 U.S.C.A. Sec. 5811;
 Sporting goods 26 U.S.C.A. Sec. 4161;
 Superfund tax 26 U.S.C.A. Sec. 4611;
 Tires 26 U.S.C.A. Sec. 4071;
 Tobacco excise taxes 26 U.S.C.A. chapter 52;
 Wagering taxes 26 U.S.C.A. chapter 35;

STATE AND MUNICIPAL—

Ad valorem property taxes Title 84 RCW;
 Alcoholic beverages licenses and stamp taxes (Breweries, distillers, distributors and wineries) chapter 66.24 RCW;
 Boxing, sparring and wrestling tax chapter 67.08 RCW;
 Business and occupation tax chapter 82.04 RCW;
 Cigarette tax chapter 82.24 RCW;
 Gift and inheritance taxes Title 83 RCW;

Insurance premiums tax chapter 48.14 RCW;
 Municipal utility taxes chapter 54.18 RCW;
 Parimutuel tax RCW 67.16.100;
 Public utility tax chapter 82.16 RCW;
 Real estate excise tax chapter 82.45 RCW;
 Tobacco products tax chapter 82.26 RCW;
 Use tax when not collected as agent for state chapter 82.12 RCW.

[Statutory Authority: RCW 82.32.300, 99-13-053, § 458-20-195, filed 6/9/99, effective 7/10/99; 83-08-026 (Order ET 83-1), § 458-20-195, filed 3/30/83; Order ET 70-3, § 458-20-195 (Rule 195), filed 5/29/70, effective 7/1/70.]

WAC 458-20-206 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-20-207 Legal, arbitration, and mediation services. (1) **Introduction.** This rule explains the taxability of amounts received for legal, arbitration, and mediation services.

(2) **Definitions.**

(a) "Arbitration" means the process by which the parties to a dispute submit to the hearing and judgment of an impartial person or group appointed by mutual consent or statute.

(b) "Arbitration services" means services relating to the resolution of a dispute submitted to arbitration.

(c) "Attorney" means an active member of a state Bar Association engaged in the practice of law. The term also includes a professional service corporation incorporated under chapter 18.100 RCW, a professional limited liability company formed under chapter 18.190 RCW, or a partnership, provided the ownership of these business entities are properly restricted to attorneys and organized primarily for engaging in the practice of law.

(d) "Legal services" means services relating to or concerned with the law. Such services include, but are not limited to, representation by an attorney (or other person, when permitted) in an administrative or legal proceeding, legal drafting, paralegal services, legal research services, arbitration, mediation, and court reporting services.

(e) "Mediation" means the process by which the parties to a dispute or negotiations agree to have an intermediary hear their differences and/or positions and facilitate and/or make suggestions concerning an agreement and/or the resolution of their dispute.

(3) **Business and occupation tax.** Beginning July 1, 1998, gross income from legal arbitration or mediation services is subject to the service and other activities classification. (See section 2, chapter 7, Laws of 1997.) Previously, legal, arbitration, and mediation services were taxable under the selected business service tax classification.

(a) **Gross income.** The gross income of the business generally includes the amount of compensation paid for legal, arbitration, or mediation services and amounts attributable to providing those services (i.e., charges for tangible personal property directly used or consumed in supplying legal, arbitration, or mediation services). Reimbursed general overhead costs are generally included in the gross income of the business even though indirectly related to litigation. Any reim-

bursed costs (not directly related to litigation) for which the attorney assumes personal liability for payment are also included in gross income.

(b) Overhead costs. Amounts received (or, for taxpayers reporting under the accrual accounting method, accrued) to compensate for overhead costs are fully subject to tax. Such overhead costs are taxable even though they may be separately stated on the billings or expressly denominated as costs of the client. Examples of such overhead costs include, but are not limited to:

(i) Photocopy or other reproduction charges, except charges paid to the provider, or the agent of the provider, for the official or original copy of a record, or other document, provided for litigation;

(ii) Long distance telephone tolls;

(iii) Secretarial expenses;

(iv) Office rent;

(v) Office supplies;

(vi) Travel, meals and lodging;

(vii) Utilities, including facsimile telephone charges; and

(viii) Postage, unless paid for service of legal papers as a direct cost of litigation.

(c) Excluded amounts. The following amounts are excluded from gross income if complete and accurate records are maintained of these amounts:

(i) Client trust accounts. The gross income of the business does not include amounts held in trust for the client.

(ii) Litigation expenses. Attorneys are bound by the rules of professional conduct. RPC 1.8(e) prohibits an attorney from financing the expenses of contemplated or pending litigation unless the client remains ultimately liable for these expenses. This means that an attorney normally acts solely as the agent for the client when financing litigation. Accordingly, amounts received from a client for the direct expenses of litigation do not constitute gross income to the attorney. Amounts received (or, for taxpayers reporting under the accrual accounting method, accrued) to compensate for the following direct litigation expenses are not included in gross income:

(A) Filing fees and court costs;

(B) Process server and messenger fees;

(C) Court reporter fees;

(D) Expert witness fees; and

(E) Costs of associate counsel.

A cash basis taxpayer cannot exclude or deduct amounts of unreimbursed litigation expenses. For example, an attorney advances all the litigation expenses for a contingency fee case. The case is ultimately resolved against the attorney's client and the expenses are not repaid because of the client's bankruptcy. The attorney cannot then deduct these expenses as a bad debt or otherwise exclude them against other income earned by the attorney.

(iii) Expense advances and reimbursements. Sometimes in the regular course of business an attorney may receive amounts from a client for expenses of third-party providers or other costs incurred in connection with a legal matter other than litigation. Such amounts are excluded from the business and occupation tax only if the attorney has no obligation for payment other than as agent for the client or equivalent commitment for their payment (see WAC 458-20-111, Advances

and reimbursements). Generally, such amounts will be for third-party service providers (for example, accountants, appraisers, architects, artists, drafters, economists, engineers, investigators, physicians, etc.). However, these costs could also include client expenses for registration, licensing or maintenance fees, title and other insurance premiums, and escrow fees paid to third-party escrow agents. These costs are excludable only when the attorney does not have any personal liability to the third-party provider for their payment.

(iv) Records requirement. In order to support the exclusion from taxable gross income of any of the foregoing expenses, the attorney must maintain records which indicate the amount of the payment received from the client, the name of the client, the name of the person to whom the attorney has made payment, and a description of the item for which payment was made. If the foregoing expenses are incurred outside the context of litigation or contemplated litigation, the attorney must maintain records which indicate the amount of the payment received, the name of the client, and the person to whom the attorney makes payment. In addition, the attorney must provide the person to whom payment is made with written notice that:

(A) Payment is made, or will be made on behalf of a named client; and

(B) The attorney assumes no liability for payment, other than as agent for the named client.

(d) Multiple business activities. Attorneys and other persons engaged in providing legal, arbitration, and mediation services sometimes engage in other business activities which are classified under a different tax classification (i.e., escrow services). In some circumstances, income from these other business activities will be subject to tax under a different tax classification.

(i) Independent business activities. If the other activities engaged in by the person are independent from the legal, arbitration, or mediation services provided to the client, these activities are taxed based on the tax classification that applies to each of those other activities, provided these other activities are separately accounted for and/or itemized as a separate amount in billings or invoices to the client. Failure to separately account and/or itemize for such activities will result in classification of all activities under the service and other activities classification.

(ii) Combined business activities. If the other activities are related to the legal, arbitration, or mediation services provided to the client, the primary activity provided the client in each taxable period will determine the tax classification. Generally, the activity will be considered as related when there is some interaction between the two activities to reach an ultimate goal (i.e., a law firm which provides legal advice and brokers the financing of a business arrangement). There are a number of elements which may be examined to determine whether a sufficient relationship between the multiple activities exist. Some elements considered are the timing for the selection and provision of services, the relationship between the contracting parties, the procedure used in the selection process, the dependence of the relationship between the two or more activities, the relationship of the prices between the two activities, and the means of payment selected for the activities.

(iii) 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.

(A) A law firm has an escrow department. This escrow department is run by employees who are not attorneys (but the supervising employee is a limited practice officer who has experience as a certified escrow agent), has a separate phone number, separate bank account, separate trust account, separate computer system, and maintains its own accounting system. Contracts for the escrow services state that the law firm is being retained as an independent escrow agent and not to represent any person involved in the transaction. Further, the contract states that the law firm shall not offer legal advice upon the transaction. The escrow department of this law firm would be considered an independent business activity and be taxed separately under the retailing classification for escrow businesses (see WAC 458-20-156).

(B) A law firm limits its practice to real estate. It primarily provides escrow services and real estate closings. Even though this firm has chosen to limit its practice, it is the nature and the character of its activities which will determine the primary activity for each closing. When a closing includes the preparation, selection, or drafting of the deed between the purchaser and seller, drafting legal documents to obtain clear title, and/or the preparation, selection or drafting of the promissory notes, deeds of trust, mortgages, and agreements modifying these documents, it will be presumed that the primary activity performed for the client is providing these legal services.

(I) The law firm closed a real estate transaction performing all the escrow services. Except for the escrow services provided, the firm represented the buyer in the closing. Although an attorney from the firm reviewed and approved the legal documents provided by the seller, the attorney did not prepare any legal documents for the transaction. Since the firm was representing a specific client in this real estate closing, the escrow services are considered incidental to the legal services provided. Accordingly, the firm will report the income from this transaction under the service and other activities classification.

(II) The firm was engaged by both parties in a real estate transaction to handle a real estate closing. An attorney for the firm selected and prepared the earnest money escrow agreement, the purchase and sales agreement, the closing agreement, and the deeds for the transfer. Title was clear and did not require any additional drafting. The firm also entered into an escrow agreement with both parties and held in escrow the buyer's deposit and the seller's deed. Since an attorney for the law firm was required to select, analyze, and review the legal documents in this transaction, the escrow activity will be considered incidental. This closing is reported under the service and other activities classification for legal services.

(III) A certified escrow agency, owned by a principal qualified under APR 12 (the limited practice rule for limited practice officers), provides both escrow and the limited legal services allowed under APR 12 to its clients. The escrow company itemizes the services provided. APR 12(d) allows a limited practice officer to select, prepare and complete docu-

ments in a form previously approved by the board for use in closing a loan, extension of credit, sale or other transfer of real or personal property. The nature of this limited license prevents an escrow company using limited practice officers from ever engaging in legal services as a primary activity in a real estate closing. Accordingly, the escrow company will report the income from escrow and closings under the retail sales classification (see WAC 458-20-156).

(IV) The same facts as above, but the escrow company hires employees who are attorneys to provide the allowable limited legal services. The result is the same. Under RPC 5.4, an attorney is prohibited from sharing legal fees with a non-lawyer and, under RPC 5.5, cannot assist a person who is not a member of the Bar Association in the performance of an activity that constitutes the unauthorized practice of law, and under RPC 7.1 a lawyer cannot make false or misleading communications about the lawyer or the lawyer's services. Accordingly, an attorney hired by an escrow company would not be providing legal services to the escrow companies' clients except to the extent authorized for a limited practice officer. Since only limited legal services can be offered, the escrow company would continue to report all fees from both the escrow and closing services under the retail sales tax classification.

(4) **Retail sales tax.** Sales of tangible personal property to attorneys for use in rendering professional services are retail sales upon which the retail sales tax must be collected. Such sales include, among others, sales of office furniture and equipment, stationery, office supplies, law books, and reference materials.

(5) **Use tax.**

(a) The use tax applies upon the use of articles purchased or manufactured for use upon which retail sales tax has not been paid or collected. This includes, but is not limited to, the following:

(i) Materials used and consumed while rendering legal, arbitration, or mediation services; and

(ii) Office supplies and office equipment purchased by the firm for its own use.

(b) The use tax also applies to all purchases of tangible personal property acquired without payment of retail sales tax and resold to clients but not separately stated from legal services rendered on the agency's billing.

[Statutory Authority: RCW 82.32.300. 99-13-092, § 458-20-207, filed 6/14/99, effective 7/15/99. Statutory Authority: RCW 82.32.300 and 34.05.410. 95-15-013, § 458-20-207, filed 7/7/95, effective 8/7/95. Statutory Authority: RCW 82.32.300. 85-20-012 (Order ET 85-4), § 458-20-207, filed 9/20/85; Order ET 70-3, § 458-20-207 (Rule 207), filed 5/29/70, effective 7/1/70.]

WAC 458-20-216 Successors, quitting business. (1) **Introduction.** RCW 82.32.140 requires a taxpayer to remit any outstanding tax liability to the department of revenue (department) within ten days of quitting business. If this tax is not paid by the taxpayer, any successor to the taxpayer becomes liable for the outstanding tax. This rule explains under what circumstances a person is considered a successor to a person quitting business. It explains the successor's responsibility for payment of an outstanding tax liability incurred by the person quitting business. This rule also pro-

vides examples illustrating when successorship does or does not apply.

(2) **"Successor" defined.** For purposes of this rule, the term "successor" means:

(a) Any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, a major part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the taxpayer. RCW 82.04.180. Persons acquiring only intangible assets such as copyrights and trademarks are not "successors."

(i) A person is a successor if he or she acquires a major part of the taxpayer's materials, supplies, merchandise, inventory, fixtures, or equipment in bulk, whether he or she operates the business or not. A person acquires a "major part" of the materials, supplies, merchandise, inventory, fixtures, or equipment if he or she acquires more than fifty percent of the fair market value of any such property at the time of conveyance.

(ii) However, persons who acquire a major part of a taxpayer's materials, supplies, merchandise, inventory, fixtures, or equipment through insolvency proceedings or regular legal proceedings to enforce a lien, security interest, or judgment, or by repossession under a security agreement are not successors.

(b) Any person obligated to fulfill the terms of a contract as a guarantor of a defaulting contractor is deemed a successor to that contract. RCW 82.04.180.

(3) **Responsibility for outstanding tax liability.** Whenever a taxpayer quits business, sells out, exchanges or otherwise disposes of his or her business, any tax administered by the department and which the taxpayer is liable for shall become immediately due and payable. The taxpayer shall, within ten days of quitting, selling out, exchanging, or otherwise disposing of the business, complete a tax return and pay the tax due. RCW 82.32.140.

(a) A successor shall withhold from the purchase price a sum sufficient to pay any tax due from the taxpayer until the taxpayer produces a statement of tax status from the department showing either no tax is due or payment in full of any tax due. If the tax is not paid by the taxpayer within ten days from the date of sale, exchange, or disposal of the business, the successor shall become liable for the payment of the full amount of tax. RCW 82.32.140.

(b) The payment of the seller's tax liability by the successor shall be deemed a payment upon the purchase price. If the sum of the payment to the department plus any payments made, directly or indirectly, to the seller is greater in amount than the purchase price, the amount of the difference shall become a debt due the successor from the taxpayer. RCW 82.32.140.

(c) A successor is not liable for any tax due from the taxpayer if:

(i) The successor provides written notice of the acquisition to the department; and

(ii) Within six months of receiving the written notice, the department has not issued a tax assessment against the taxpayer and mailed a copy of a notice of tax due to the successor. RCW 82.32.140.

(d) Written notice of the acquisition must be sent either to Department of Revenue, Taxpayer Account Administration, P.O. Box 47476, Olympia, Washington 98504-7476 or to one of the department's field offices. The six-month period begins upon the department's receipt of the written notice. The written notice must contain the following information:

(i) The taxpayer's name, business name, address, and UBI number if known;

(ii) The date of the acquisition;

(iii) A statement that the successor acquired assets of the taxpayer who was quitting business; and

(iv) A description of the assets acquired.

(4) **Examples.** The following factual situations illustrate the application of successorship. These factual situations should be used only as a general guide. The successorship status of each situation depends on all the facts and circumstances.

(a) Taxpayer quits business and sells all equipment, fixtures, and inventory to one purchaser. The taxpayer may be either solvent or insolvent at the time of sale. The purchaser is a successor.

(b) Taxpayer quits business, selling only intangible assets consisting of customer lists and a covenant not to compete. The purchaser is not a successor.

(c) Taxpayer sells business, including all fixtures and equipment to Purchaser A, and all inventory to Purchaser B. Both purchasers are successors.

(d) Taxpayer sells business, including all fixtures, equipment, and inventory in the following percentages of fair market value to three purchasers:

PURCHASER A	PURCHASER B	PURCHASER C
55% of fixtures	25% of fixtures	20% of fixtures
30% of equipment	30% of equipment	40% of equipment
30% of inventory	55% of inventory	15% of inventory

Purchaser A is a successor because it has acquired a major part, 55% of the fair market value, of the fixtures of the taxpayer. Purchaser B is a successor because it has acquired a major part, 55% of the fair market value, of the inventory of the taxpayer. Purchaser C is not a successor because it has not acquired a major part of any of the categories of assets sold by the taxpayer.

(e) Taxpayer obtains a loan from a financial institution to purchase equipment, fixtures, and inventory. The financial institution secures the loan by taking a security interest in the equipment, fixtures, and inventory. Taxpayer quits business, leaving the equipment, fixtures, and inventory behind. The financial institution repossesses these items. The financial institution is not a successor.

(f) Taxpayer purchases all equipment and inventory under a line of credit extended by a bank and guaranteed by a third party. The third party perfects a security interest in the equipment and inventory. Taxpayer quits business, surrendering the equipment and inventory to the third party guarantor. The third party guarantor is not a successor.

(g) Taxpayer leaves business, including fixtures, materials and inventory, which the landlord holds for unpaid rent. The landlord forecloses the landlord's lien using the summary foreclosure provisions of RCW 60.10.030, or holds a foreclosure sale by the sheriff, or accepts a bill of sale in satisfaction

of the landlord's lien for rent created by RCW 60.72.010. The landlord is not a successor.

(h) Taxpayer purchases all equipment and inventory under a security agreement.

(i) If the property is repossessed by the vendor, the vendor is not a successor.

(ii) If the taxpayer sells his or her equity under the security agreement to a third person, the third person is a successor.

(iii) If the equipment and inventory is not repossessed and the vendor buys back the interest of the taxpayer without following the summary foreclosure provisions of RCW 60.10.030, the vendor is a successor.

(i) Taxpayer dies or becomes bankrupt, goes into receivership, or makes an assignment for the benefit of creditors. The executor, administrator, trustee, receiver, or assignee is not a successor but stands in the place of the taxpayer and is responsible for payment of tax out of the proceeds derived upon disposition of the assets. A purchaser from the executor, administrator, trustee, receiver, or assignee is not a successor, unless under the terms of the purchase agreement the purchaser assumes and agrees to pay taxes and/or lien claims.

(j) Taxpayer is a contractor and is required to post a bond to insure completion of the contract. Taxpayer defaults on the contract and the bonding company completes it. The bonding company is a successor to the contractor to the extent of the contractor's liability for that particular contract and is also liable for taxes incurred in the completion of the contract.

[Statutory Authority: RCW 82.32.300, 99-08-034, § 458-20-216, filed 3/31/99, effective 5/1/99; Order ET 70-3, § 458-20-216 (Rule 216), filed 5/29/70, effective 7/1/70.]

WAC 458-20-222 Veterinarians. (1) Introduction.

This rule explains Washington's business and occupation (B&O), retail sales, and use tax applications to sales and services provided by veterinarians. It explains the tax liability resulting from the performance of professional services and the sale of medicines and supplies for use in the care of animals. This rule also explains the tax liability of persons who provide other services for live animals including grooming, boarding, training, artificial insemination, and stud services.

(2) **Business and occupation tax.** Persons providing services for live animals are subject to the B&O tax as follows:

(a) **Service and other activities.** The service and other activities B&O tax applies to the gross income derived from veterinary services. For purposes of this rule, "veterinary services" includes the diagnosis, cure, mitigation, treatment, or prevention of disease, deformity, defect, wounds, or injuries of animals. It also includes the administration of any drug, medicine, method or practice, or performance of any operation, or manipulation, or application of any apparatus or appliance for the diagnosis, cure, mitigation, treatment, or prevention of any animal disease, deformity, defect, wound, or injury. "Veterinary services" does not include the therapeutic use of an item of personal property opened and partly administered by the veterinarian or by an assistant under his or her direction, and taken by the customer for further administration by the customer to the animal, provided the charge for the item is separately stated on the invoice.

(i) The gross income derived from veterinary services includes the amount paid by a customer for any drug, medicine, apparatus, appliance, or supply administered by the veterinarian or by an assistant under his or her direction, even when the charge is separately stated on the invoice from charges for other veterinary services.

(ii) The service and other activities B&O tax applies to the gross income derived from grooming, boarding, training, artificial insemination, stud services, or other services provided to live animals. However, if the person providing these services also sells tangible personal property to a consumer for a separate and distinct charge, the charge made for the tangible personal property is subject to the retailing classification of B&O tax.

(b) **Retailing.** The retailing classification of B&O tax applies to the gross income from the sale of drugs, medicines, or other substances or items of personal property to consumers when the sale is not part of veterinary services. The retailing classification applies only when the veterinarian does not administer, or only administers part of the drug, medicine, or other substance or item of personal property to the animal with further administration to be completed by the customer. Adequate records must be kept by the veterinarian to distinguish drugs, medicines, or other substances or items of personal property that are administered as part of veterinary services from those that are sold at retail. The retailing classification also applies to gross income from the sale of tangible personal property for which there is a separate and distinct charge, when sold by persons providing grooming, boarding, training, artificial insemination, stud services, or other services for live animals.

(3) **Retail sales tax.** The retail sales tax applies to all the retail sales identified under subsection (2) of this rule, unless a specific exemption applies.

(a) **Sales to veterinarians and others who provide services to live animals.** Sales of tangible personal property to veterinarians for use or consumption by them in performing veterinary services are retail sales upon which the retail sales tax must be collected. Such sales include, among others, sales of medicines, bandages, splints and other supplies primarily for use by veterinarians in performing their professional services. Sales of tangible personal property to persons who provide grooming, boarding, training, artificial insemination, stud services, or other services for live animals for use or consumption by those persons in performing their services are also retail sales upon which the retail sales tax must be collected.

Sales to veterinarians and others who purchase tangible personal property for the purpose of resale in the regular course of business without intervening use by the buyer are sales at wholesale and not subject to the retail sales tax, provided the buyer presents the seller with a resale certificate. Refer to WAC 458-20-102 (Resale certificates) for more information regarding the use of resale certificates, and particularly the subsection of that rule regarding purchases for dual purposes.

(b) **Sales to consumers.** Tangible personal property sold by a veterinarian to a consumer that is carried away by or left with the consumer is a retail sale and the retail sales tax must be collected. Items of personal property include those that

the veterinarian may have opened and used for therapy but were taken by the consumer to complete the therapy. The tax applies whether the tangible personal property was sold at the time the professional services were performed or was sold subsequently, provided the charge for the item is separately stated. Sales to a consumer of tangible personal property by a person who provides other than veterinary services to live animals and who separately states the charges, are subject to retail sales tax and the retail sales tax must be collected. (See WAC 458-20-122 for additional information regarding sales of feed to farmers.)

(c) **Exemptions.** A retail sales tax exemption is available for sales of feed for purebred livestock used for breeding purposes, provided the seller obtains a completed purebred livestock exemption certificate from the buyer. Also exempt are sales of semen for use in the artificial insemination of livestock. These sales remain subject to the retailing B&O tax.

(4) **Use tax.** The use tax complements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any tangible personal property purchased at retail, where the user has not paid retail sales tax with respect to the purchase of the property used. (See also WAC 458-20-178.) If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the retail sales or use tax directly to the department unless the purchase and/or use is exempt from tax. Complementary use tax exemptions are available for the use of those items identified in subsection (3)(c) of this rule. Veterinarians and others who provide services to live animals are required to pay use tax on any samples that they acquire or give away unless retail sales tax or use tax has been previously paid on these samples.

(5) **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 other situations must be determined after a review of all of the facts and circumstances.

(a) A dog owner brings her dog to a veterinarian for professional services. The dog has multiple wounds and a broken leg. The veterinarian sets the broken bone and uses a cast and other appropriate therapeutic medicines on the dog in the course of treatment. The veterinarian also applies some salve to the wounds and gives the remainder of the salve to the dog's owner for application over the next few days. The veterinarian segregates the charges for the veterinary services, including the cast materials, and the medicines. The charge for the salve is also separately stated on the billing invoice. The gross income for the veterinary services is subject to the service and other activities B&O tax classification. This includes the charges for the cast materials and the medicines. The charge for the salve is considered a retail sale, and subject to the retailing B&O and retail sales taxes. If the veterinarian had previously paid sales or use tax on the salve, he or she is allowed a tax paid at source deduction (see also the discussion of tax paid at source deductions in WAC 458-20-102).

(b) AB boards other person's horses for a fee. When AB bills the customer, AB separately lists the charges for the boarding services and the feed. The gross income received by AB for boarding services is subject to B&O tax under the

service classification. The charges for the feed are subject to the retailing B&O and retail sales taxes. However, a retail sales tax exemption is available for any sales of feed for purebred livestock, if the livestock is used for breeding purposes and AB obtains a completed purebred livestock exemption certificate from the customer.

(c) CD trains and boards dogs for various lengths of time. CD bills the customer a lump sum amount for the training and boarding, including feed for the dogs. The gross income received by CD is subject to B&O tax under the service classification. CD must pay retail sales tax or use tax on the feed it purchases for the dogs.

(d) EF is a farrier and shoes horses for others. When EF performs this service, he lists a separate charge on the invoice for the horseshoes. The charge for the horseshoeing service is subject to B&O tax under the service classification, and the separate charge for the horseshoes is subject to the retailing B&O and retail sales taxes. EF's purchases of the horseshoes are purchases for resale and not subject to the retail sales tax.

[Statutory Authority: RCW 82.32.300, 99-08-033, § 458-20-222, filed 3/31/99, effective 5/1/99; 83-08-026 (Order ET 83-1), § 458-20-222, filed 3/30/83; Order ET 70-3, § 458-20-222 (Rule 222), filed 5/29/70, effective 7/1/70.]

WAC 458-20-225 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-20-226 Landscape and horticultural services. (1) **Introduction.** This rule provides tax reporting instructions for persons who provide landscape and horticultural services. This rule does not apply to silvicultural activities or to horticultural services provided to farmers. Silviculture means the commercial production of timber and includes activities such as growing seed into seedlings, planting, fertilizer and pesticide application, pruning and thinning as provided to timber growers. Silvicultural activities are generally subject to the extracting B&O tax classification or the service and other business activities B&O tax classification. (See WAC 458-20-135 and 458-20-224.)

(2) **Retail landscape and horticultural services.** Landscape and horticultural services which are retail sales include:

(a) Grading, filling, leveling, planting, seeding, sodding, removing, cutting, trimming, pruning, mulching, aerating, applying chemicals, watering, and fertilizing to establish, promote, or control the growth of trees, shrubs, flowers, grass, ground cover and other flora for ornamentation or other nonagricultural purposes.

(b) The sale or rental of landscaping materials and the construction of sprinkling systems, walks, pools, fences, trellises, rockeries, and retaining walls.

(c) Cultivating fruits, flowers, and vegetables for consumers other than farmers.

(d) All tree trimming other than for farmers or persons engaged in silviculture. This includes all trimming for size, shape, aesthetics, removal of diseased branches, and removal of limbs because they are too close to structures. It does not include tree trimming performed for public and private electric utilities or at the direction of electric utilities to keep power lines, distribution lines, or equipment free of tree branches or brush.

(3) **Nonretail landscape and horticultural services.** Landscape and horticultural services which are not retail sales include:

(a) Landscape design services performed by a landscape architect separate from a contract for landscape maintenance.

(b) Planting trees for farmers.

(c) Thinning or planting of trees for persons who are involved in the commercial production of timber. These are silvicultural activities and silvicultural activities are not considered to be horticultural or landscape maintenance activities. (See WAC 458-20-135 and 458-20-209.)

(d) Landscape services performed for municipal corporations or political subdivisions of the state on real property owned by those entities if the real property is used or held for public road purposes. (See WAC 458-20-171.)

(e) Horticultural services, including spraying and fertilizing, performed for farmers for agricultural purposes. See WAC 458-20-209 for examples of horticultural services performed for farmers.

(f) Pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility. The removing and clearing of trees includes the stump removal by grinding, digging, or any other means, if performed by or at the direction of an electric utility. These are retail activities when not performed by or at the direction of an electric utility.

(4) **Business and occupation tax.** The business and occupation tax applies as follows.

(a) **Retailing.** The gross income from landscape and horticultural services which are retail sales and which are performed for consumers is taxable under the retailing classification.

(b) **Wholesaling.** The gross income from services which are retail sales and which are performed for other contractors for resale is taxable under the wholesaling classification.

(c) **Service.** The gross income from horticultural services provided to farmers is taxable under the service and other activities classification. This tax classification also applies to income received from pruning, tree trimming, removing and clearing of trees and brush near electric lines, if performed by or at the direction of an electric utility. Beginning July 1, 1998, income from services performed by landscape architects is subject to this classification. (See chapter 7, Laws of 1997.) For the period July 1, 1993, through June 30, 1998, landscape architects who performed design services were taxable under the selected business service tax classification.

(d) **Public road construction.** Persons who perform landscape services for municipal corporations or political subdivisions of the state on real property owned by those entities are taxable under the public road construction B&O tax classification, but only if the real property is used or held for public road purposes.

(e) **Government contracting.** This classification applies to persons engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures for the United States, or a city or county housing authority created under chapter 35.82 RCW. This classifica-

tion would include the construction or maintenance of items such as walls, fences, walks, pools and other structures. This classification does not include the planting of lawns or trees or the cutting of grass or tree trimming performed for these customers. These activities are subject to the retailing classification.

(5) **Retail sales and use tax.** Landscape gardeners and horticulturists, except horticulturists performing services for farmers, must generally collect and report the retail sales tax upon the full contract price when performing landscaping or horticultural services for consumers. For purposes of collecting the local option retail sales tax, the sale takes place where the service is performed. See WAC 458-20-145. The retail sales tax does not apply to charges to the United States for landscape services, including landscape maintenance services, and sellers may take a deduction from the retail sales tax classification in reporting those sales which are taxable under the retailing B&O tax classification.

(a) Persons performing a landscaping or horticultural service for a contractor for resale must provide a resale certificate. See WAC 458-20-102.

(b) Landscape gardeners and horticulturists must pay the retail sales tax to their vendors when purchasing tools, equipment, and supplies which are not resold, either directly or as a component part of the finished work. They must pay deferred sales or use tax directly to the department upon the value of any such property that was purchased or acquired without payment of Washington retail sales tax.

(c) Plants, shrubs, trees, sod, seed, chemicals, fertilizer, peat moss, sprinkler systems, rocks, building materials and any other tangible personal property which becomes a part of the finished work may be purchased for resale, except items used in providing horticultural services for farmers and items used in performing public road construction, government contracting, or services for timber growers.

(d) Retail sales tax or use tax is due with respect to items purchased by horticulturists for use in performing services for farmers. (See also WAC 458-20-209.)

(e) Retail sales tax or use tax is due with respect to items purchased for use in performing services for timber growers or which are taxable as either public road construction or government contracting. This includes items such as sod, seed, trees, building materials, fertilizers, spray materials, etc.

(f) The retail sales tax does not apply to the charge made by persons performing tree trimming near electric transmission or distribution lines, but only if the work is performed at the direction of an electric utility. Persons performing these services must pay retail sales or use tax on all materials, supplies, tools, and equipment used in performing the service.

(6) **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 results of other situations must be determined after a review of all facts and circumstances.

(a) John Doe, a landscaper, was hired by a city to maintain the landscaping around the buildings at the city's municipal golf courses. He must collect and report the retail sales tax and pay retailing B&O tax on the full contract amount.

(b) John Doe purchased several plants, some fertilizer, and insect spray to use in landscaping the golf course. He also purchased some solvent and mineral oil to clean and maintain some of his landscaping tools. His purchases of the plants, fertilizer and insect spray are purchases for resale. He must pay retail sales tax to his vendors on his purchases of the solvent and mineral oil.

(c) Landscaping company provides complete landscaping services including landscape design by a licensed landscape architect, installation, and maintenance. Landscaping charged Jane Smith two hundred dollars for a landscaping plan for her new home. She planned to purchase the plants and do the landscaping work herself. Landscaping must report B&O tax on the charge for the design service at the service and other activities classification rate.

(d) Landscaping company entered into a contract to landscape the yard for a client's new home. The company must collect and report retail sales tax and pay retailing B&O on the full contract amount, even though part of Landscaping's services included drawing a landscaping plan.

(e) Landscaping company entered into a two-phase contract with a county. Phase one required the company to plant trees and shrubs and put in a sprinkling system as part of a public road project. The sprinkler system is located in the public road right of way. The contract provided Landscaping would receive five hundred thousand dollars for phase one of the project. Phase two provided that Landscaping would maintain the trees and shrubs for a period of five years. The contract provided for payments of four thousand dollars per month plus costs for fertilizer and spray for maintaining the planted strips.

(i) Phase one is part of public road construction and Landscaping is taxable under the public road construction classification upon the five hundred thousand dollars received for phase one. The company must pay sales tax when purchasing the trees and shrubs and materials for the sprinkling system for use in phase one of the project. See WAC 458-20-171 for the tax liability for public road construction.

(ii) Phase two for the maintenance of the completed project is also public road construction. This is not a retail sale because the work is performed for a municipal corporation or political subdivision of the state on land owned by that entity and which is being used for public road purposes. See RCW 82.04.190.

Landscaping will owe B&O tax under the public road construction classification and must pay retail sales or use tax on any items used in performing this work, including purchases of fertilizers, chemicals and other materials.

(f) John Doe operates a tree trimming business and has a contract with a public utility district (PUD) to trim trees along the PUD's power lines. Some of these trees are on private property with the PUD obtaining the permission of the owners to trim the trees. Some trees are also located on land for which the PUD has an easement, including along public road right of ways. This tree trimming is not a retail sale, but taxable under the service and other activities classification. This includes trimming performed along the road right of way. The property on the road right of way is not owned by the PUD for whom the work is being performed. The easement is

not for use as a public road and as such the tree trimming is not public road construction.

(g) John Doe provides a tree trimming service to his residential customers. The tree trimming is performed at the direction of the residential customer to remove diseased limbs, limbs too close to the house, limbs which are a safety hazard because of their proximity to power lines, and limbs which are objectionable to the desired shape of the tree. All of this tree trimming is a retail activity, regardless of the specific reason for cutting the limbs.

[Statutory Authority: RCW 82.32.300. 99-09-013, § 458-20-226, filed 4/13/99, effective 5/14/99. Statutory Authority: RCW 82.32.300 and to implement RCW 82.04.050. 96-05-080, § 458-20-226, filed 2/21/96, effective 3/23/96. Statutory Authority: RCW 82.32.300 and 82.04.050 (3)(e). 94-23-053, § 458-20-226, filed 11/10/94, effective 12/11/94. Statutory Authority: RCW 82.32.300. 83-08-026 (Order ET 83-1), § 458-20-226, filed 3/30/83; Order ET 70-3, § 458-20-226 (Rule 226), filed 5/29/70, effective 7/1/70.]

WAC 458-20-231 Tax on internal distribution. (1)

Introduction. Effective July 1, 1998, the tax on internal distribution was repealed by chapter 329, Laws of 1998. Prior to July 1, 1998, RCW 82.04.270 imposed a tax equal to the wholesaler's tax upon persons doing functions essentially the same as those of a wholesaler, but not making sales. Persons engaged in the business of distributing articles of tangible personal property owned by them from their own warehouse or other central location in this state to two or more of their own retail stores or outlets in this state were taxable under the internal distribution classification of the business and occupation tax. This tax applied to transfers of merchandise from a central location to retail outlets even if the goods were pre-ordered and there was no inspection or opening of cartons or boxes at or by the central location.

(2) **Warehouse or other central location.** The term "warehouse or other central location" generally means any facility regardless of the type of activity conducted there, which is operated in this state by a person who distributed tangible personal property from that facility to two or more of his or her own retail stores or outlets.

(a) This term includes any retail outlet no matter how the distributed goods are inventoried or stored at such outlet. The term includes any facility, central distributing point, building, loading platform and adjacent areas operated by the taxpayer where articles of tangible personal property are received and from which they are distributed. Such facilities, distributing points, buildings, platforms and areas are included within the term regardless of how long such property may remain at such places and regardless of the nature of the activity performed at such places with respect to such property.

(b) This term also includes any manufacturing or processing facility operated by the taxpayer from which such distribution is made. The term does not include facilities operated by other persons at which team track deliveries are made into trucks for distribution to retail outlets nor does it include any individual trucks owned by the taxpayer from which deliveries are made at facilities or places not owned by the taxpayer to other trucks for distribution to retail outlets.

(3) **Two or more retail stores or outlets.** The term "two or more of their own retail stores or outlets" means two or more retail stores operated within this state separate and apart

from any "warehouse or other central location." The term does not include a retail store or retail outlet, a part of which is operated as a warehouse from which distribution is made. However, a retail store or outlet will be counted as separate and apart, even though it may be located within the same premises or under the same roof as a warehouse or central location, if it is operated separately, as evidenced for example by separate employee payrolls, accounting records, inventory control, or clearly defined work and retail sale areas. The term does not include trucks or vans used solely for delivery purposes. The term does include trucks or vans from which sales are made at retail such as sales of safety shoes or food through catering vans. The term "retail store or outlet" does not include vending machines or similar devices through which sales are made by coin deposits. However, the term includes business establishments which sell goods to consumers primarily through the use of such devices.

(a) Transfers of merchandise for sale on consignment are not subject to the internal distributions tax when the merchandise is delivered to retail outlets operated by another retailer. Such transfers are not taxable because delivery is not made to the distributors own retail stores or outlets.

(b) Shipments directly to a consumer from a warehouse or central location are not subject to the internal distributions tax even if the billing to the consumer is made from a branch location of the distributor. There must be a physical delivery of the merchandise to the branch location for the internal distributions tax to apply.

(4) **Articles of tangible personal property.** The term "articles of tangible personal property" means all goods distributed from a warehouse or central location for sale, including particular articles which may be distributed to only one of two or more retail stores or outlets.

(5) **Taxable distributions.** In cases where the taxpayer sells at both wholesale and retail, the internal distribution tax will not apply with respect to articles distributed for sale at wholesale and upon the sale of which tax will be due under the classification wholesaling—other. Articles distributed from independent manufacturers or distributors directly to the taxpayer's retail stores or outlets, or the taxpayer's retail customers are not taxable distributions by the taxpayer. Only the first distribution of seasonal or other goods from a warehouse or central location is taxable, whether or not such goods were originally received in a retail store and later transferred to the warehouse or central location from which taxable distribution is later made.

(6) **Determination of the value of the articles distributed.** The value of articles distributed shall correspond as nearly as possible to gross proceeds of sales at wholesale in this state by other taxpayers of similar articles of like quality and character and in similar quantities.

(7) **Methods for determining taxable value.** One of the following methods must be used for determining the taxable value of internal distributions.

(a) **Method 1. Cost of production.** The value of articles distributed may be computed upon the basis of the cost of manufacturing or producing such articles. In such case there shall be included every item of cost attributable to the particular article or articles manufactured or produced, including

direct and indirect overhead costs and the cost of transportation to the local distribution point. In such event tax liability accrues during the period in which the articles are distributed.

(b) **Method 2. Purchase price.** The value of articles distributed may be computed upon the basis of purchase price including delivery costs of such articles delivered at the local distribution point. The purchase price must include the amount of state and federal excise taxes imposed upon the distributor for the sale, handling or distribution of the articles distributed, whether such taxes are paid by the distributor to his vendor, or are paid by him directly to the taxing body. In such event tax liability accrues during the period in which the articles were purchased, even though the particular articles purchased may not be distributed until a later date. (Not available to those who manufacture or produce the articles distributed.)

(c) **Method 3. Invoice price to retail store.** The value of articles distributed may be computed upon the basis of charges or memorandum invoices rendered to the retail stores at the time the articles are distributed, providing the amount of such charges or invoices is not less than the cost price of such articles. In computing the cost price, there must be included the amount of state and federal excise taxes imposed upon the distributor for the sale, handling or distribution of the articles distributed, whether such taxes are paid by the distributor to his vendor, or are paid by him directly to the taxing body. In such event tax liability accrues during the period in which the articles are distributed.

(d) **Method 4. Retail selling price less 15%.** The value of articles distributed may be computed upon the basis of the retail selling price less 15%. In such event tax liability accrues during the period in which the articles are sold at retail.

(e) **Method 5. Corresponding wholesale sales.** The value of articles distributed may be determined according to the gross proceeds of sales of similar articles of like quality, character and quantity where bona fide wholesale sales are made during the same period, either by the taxpayer or by others, and providing a general standard price is established for such articles during said period. In such event tax liability accrues during the period in which the articles are distributed.

(8) **Election to be made.** A taxpayer may elect to report upon the basis of any one of the five above methods, providing that the method elected shall be applied to all articles distributed, and after such election is made such taxpayer shall not be permitted to change to any other method without securing the written consent of the department of revenue. Taxpayers who manufacture the product may use method 1 for those products and any one of the other methods for products which they do not manufacture. Intricate or unusual problems concerning determination of the value of articles distributed should be submitted to the department for special ruling. The statute provided that the internal distributions tax may not be assessed twice to the same person for the same article. In the absence of separate accounting for articles upon which the tax has or has not been paid, the taxpayer may use percentage formula computed according to a factual segregation of articles distributed for a test period of at least two representative months. Any such formula is subject to approval by the department.

[Statutory Authority: RCW 82.32.300, 99-02-055, § 458-20-231, filed 1/5/99, effective 2/5/99; 90-23-020, § 458-20-231, filed 11/14/90, effective 12/15/90; 83-08-026 (Order ET 83-1), § 458-20-231, filed 3/30/83; Order ET 70-3, § 458-20-231 (Rule 231), filed 5/29/70, effective 7/1/70.]

WAC 458-20-246 Sales to or through a direct seller's representative. (1) **Introduction.** RCW 82.04.423 provides an exemption from the business and occupation (B&O) tax on wholesale and retail sales by a person who does not own or lease real property in the state, is not incorporated in the state, does not maintain inventory in this state, and makes sales in this state exclusively to or through a "direct seller's representative." This rule explains the statutory elements that must be satisfied in order to be eligible to take this exemption.

(2) **Background.** The statutory language describing the direct seller's representative is substantially the same language as contained in the federal Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, PL 97-248. See 26 USC 3508. The federal law designates types of statutory non-employees for social security tax purposes. The purpose of the direct seller provision in the federal tax law is to provide that a direct seller's representative is not an employee of the direct seller, thereby relieving the direct seller of a tax duty. Under the federal law, the direct seller is a business that sells its products using a representative who either purchases from the direct seller and resells the product or sells for or solicits sales on behalf of the direct seller. Retail sales are limited to those occurring in the home or in a temporary retail establishment, such as a vendor booth at a fair.

The 1983 Washington state legislature used the same criteria to delineate, for state tax purposes, the necessary relationship between a direct seller and a direct seller's representative.

(3) **The direct seller's exemption.** The exemption provided by RCW 82.04.423 is limited to the B&O tax on wholesaling or retailing imposed in chapter 82.04 RCW (Business and occupation tax). A direct seller is subject to other Washington state tax obligations, including, but not limited to, the sales tax under chapter 82.08 RCW, the use tax under chapter 82.12 RCW, and the litter tax imposed by chapter 82.19 RCW.

(4) **Who may take the exemption.** The B&O tax exemption may be taken by a person (the direct seller) selling a consumer product using the services of a representative who sells or solicits the sale of the product as outlined in statute. There are ten elements in the statute that must be present in order for a person to qualify for the exemption for Washington sales. The person must satisfy each element to be eligible for the exemption. The taxpayer must retain sufficient records and documentation to substantiate that each of the ten required elements has been satisfied. RCW 82.32.070.

(a) The four statutory elements describing the direct seller. RCW 82.04.423 provides that a direct seller:

(i) Cannot own or lease real property within this state. For example, if the direct seller's representative is selling vitamins door to door for the direct seller, but the direct seller owns or leases a coffee roasting factory in the state, the direct seller is not eligible for this exemption; and

(ii) Cannot regularly maintain a stock of tangible personal property in this state for sale in the ordinary course of business. This provision does not, however, prohibit the direct seller from holding title to the consumer product in the state. For instance, the direct seller owns the consumer products sold by the direct seller's representative when the representative is making retail sales for the direct seller. However, the personal property must not be a stock of goods in the state that is for sale in the ordinary course of business. The phrase "sale in the ordinary course of business" means sales that are arm's length and that are routine and reasonably expected to occur from time to time; and

(iii) Is not a corporation incorporated under the laws of this state; and

(iv) Makes sales in this state exclusively to or through a direct seller's representative. This provision of the statute describes how sales by the direct seller may be made. To be eligible for the exemption, all sales by the direct seller in this state must be made to or through a direct seller's representative. The direct seller may not claim any B&O tax exemption under RCW 82.04.423 if it has made sales in this state using means other than a direct seller's representative. This requirement does not, however, limit the methods the direct seller's representative may use to sell these products. For example, the representative can use the mail or the internet, if all other conditions of the exemption are met. The direct seller's use of mail order or internet, separate from the representative's use, may or may not be found to be "sales in this state" depending on the facts of the situation. If the direct seller's use of methods other than to or through a direct seller's representative constitutes "sales in this state," the exemption is lost. Additionally, a direct seller does not become ineligible for the exemption due to action by the direct seller's representative that is in violation of the statute, such as selling a product to a permanent retail establishment, if the department finds by a review of the facts that the ineligible sales are irregular, prohibited by the direct seller, and rare.

If a seller uses a direct seller's representative to sell "consumer products" in Washington, and also has a branch office, local outlet, or other local place of business, or is represented by any other type of selling employee, selling agent, or selling representative, no portion of the sales are exempt from B&O tax under RCW 82.04.423. For example, a person who uses representatives to sell consumer products door to door and who also sells consumer products through retail outlets is not eligible for the exemption. The phrase "sales exclusively to ... a direct seller's representative" describes wholesale sales made by the direct seller to a representative. The phrase "sales exclusively ... through a direct seller's representative" describes retail sales made by the direct seller to the consumer. The B&O tax exemption provided by RCW 82.04.423 is limited to these types of wholesale and retail sales.

(b) The six statutory elements describing the direct seller's representative. RCW 82.04.423 provides the following elements that relate to the direct seller's representative:

(i) How the sale is made. A direct seller's representative is "a person who buys consumer products on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment, or who sells, or solicits the sale of, con-

sumer products in the home or otherwise than in a permanent retail establishment." The direct seller sells the product using the services of a representative in one of two ways, which are described by two clauses in the statute. The first clause ("a person who buys ... for resale" from the direct seller) describes a wholesale sale by the direct seller. The second clause (a person who "sells or solicits the sale" for the direct seller) describes a retail sale by the direct seller.

(A) A transaction is on a "buy-sell basis" if the direct seller's representative performing the selling or soliciting services is entitled to retain part or all of the difference between the price at which the direct seller's representative purchases the product and the price at which the direct seller's representative sells the product. The part retained is remuneration from the direct seller for the selling or soliciting services performed by the representative. A transaction is on a "deposit-commission basis" if the direct seller's representative performing the selling or soliciting services is entitled to retain part or all of a purchase deposit paid in connection with the transaction. The part retained is remuneration from the direct seller for the selling or soliciting services performed by the representative.

(B) The location where the retail sale of the consumer product may take place is specifically delineated by the terms of the statute. The direct seller may take the exemption only if the retail sale of the consumer product takes place either in the home or otherwise than in a permanent retail establishment. The resale of the products sold by the direct seller at wholesale is restricted by the statute through the following language: "For resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment." This restrictive phrase requires the product be sold at retail either in the home or in a nonpermanent retail establishment. Regardless of to whom the representative sells, the retail sale of the product must take place either in the buyer's home or in a location that is not a permanent retail establishment. Examples of permanent retail establishments are grocery stores, hardware stores, newsstands, restaurants, department stores, and drug stores. Also considered as permanent retail establishments are amusement parks and sports arenas, as well as vendor areas and vendor carts in these facilities if the vendors are operating under an agreement to do business on a regular basis. Persons selling at temporary venues, such as a county fair or a trade show, are not considered to be selling at a permanent retail establishment.

(ii) What product the direct seller must be selling. The direct seller must be selling a consumer product, the sale of which meets the definition of "sale at retail," used for personal, family, household, or other nonbusiness purposes. "Consumer product" includes, but is not limited to, cosmetics, cleaners and soaps, nutritional supplements and vitamins, food products, clothing, and household goods, purchased for use or consumption. The term does not include commercial equipment, industrial use products, and the like, including component parts. However, if a consumer product also has a business use, it remains a "consumer product," notwithstanding that the same type of product might be distributed by other unrelated persons to be used for commercial, industrial, or manufacturing purposes. For example, desktop computers are used extensively in the home as well as in businesses, yet

they are a consumer product when sold for nonbusiness purposes.

(iii) How the person is paid. The statute requires that "substantially all of the remuneration paid to such person, whether or not paid in cash, for the performance of services described in this subsection is directly related to sales or other output, including the performance of services, rather than the number of hours worked." The remuneration must be for the performance of sales and solicitation services and it must be based on measurable output. Remuneration based on hours does not qualify. A fixed salary or fixed compensation, without regard to the amount of services rendered, does not qualify.

Remuneration need not be in cash, and it may be the consumer product itself or other property, such as a car.

(iv) How the contract is memorialized. The services by the person must be performed pursuant to a written contract between the representative and the direct seller. The requirement that the contract be in writing is a specific statutory condition of RCW 82.04.423.

(v) What the contract must contain. The sale and solicitation services must be the subject of the contract. The contract must provide that the representative will not be treated as an employee of the direct seller for federal tax purposes.

(vi) The status of the representative. A person satisfying the requirements of the statute should also be a statutory non-employee under federal law, since the requirements of RCW 82.04.423 and 26 U.S.C. 3508 are the same. The direct seller must maintain proof the representative is a statutory nonemployee.

(5) Tax liability of the direct seller's representative. The statute provides no tax exemption with regard to the "direct seller's representative." The direct seller's representative is subject to the service and other activities B&O tax on commission compensation earned for services described in RCW 82.04.423. Likewise, a direct seller's representative who buys consumer products for resale and does in fact resell the products is subject to either the wholesaling or retailing B&O tax upon the gross proceeds of these sales. Retail sales tax must be collected and remitted to the department on retail sales unless specifically exempt by law. For example, certain food products are statutorily exempt from retail sales tax (see WAC 458-20-244).

(a) Subject to the agreement of the representatives, the direct seller may elect to remit the B&O taxes of the representatives and collect and remit retail sales tax as agents of the representatives through an agreement with the department. The direct seller's representative should obtain a tax registration endorsement with the department unless otherwise exempt under RCW 82.32.045. (See also WAC 458-20-101 on tax registration.)

(b) Every person who engages in this state in the business of acting as a direct seller's representative for unregistered principals, and who receives compensation by reason of sales of consumer products of such principals for use in this state, is required to collect the use tax from purchasers, and remit the same to the department of revenue, in the manner and to the extent set forth in WAC 458-20-221. (Collection of use tax by retailers and selling agents.)

(6) **The retail sales and/or use tax reporting responsibilities of the direct seller.** A direct seller is required to collect and remit the tax imposed by chapter 82.08 RCW (Retail sales tax) or 82.12 RCW (Use tax) if the seller regularly solicits or makes retail sales of "consumer products" in this state through a "direct seller's representative" even though the sales are exempt from B&O tax pursuant to RCW 82.04.423.

[Statutory Authority: RCW 82.32.300, 99-24-007, § 458-20-246, filed 11/19/99, effective 12/31/99; 84-24-028 (Order 84-3), § 458-20-246, filed 11/30/84.]

WAC 458-20-261 Exemptions and credits for ride sharing, public transportation, and nonmotorized commuting. (1) **Introduction.** This section explains the various tax credits and exemptions which apply in connection with ride sharing, public transportation, and nonmotorized commuting.

(2) **Definitions.** For purposes of this section, the following definitions apply, unless otherwise required by the context.

(a) "Ride sharing" and "commuter ride sharing" mean a car pool or van pool arrangement whereby one or more fixed groups not exceeding fifteen persons each including the drivers, and (i) not fewer than five persons including the drivers, or (ii) not fewer than four persons including the drivers where at least two of those persons are confined to wheelchairs when riding, are transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding special rider equipment. The transportation must be between their places of abode or termini near such places, and their places of employment or educational or other institutions, each group in a single daily round trip where the drivers are also on the way to or from their places of employment or educational or other institution. The terms include ride sharing on Washington state ferries.

(b) "Ride sharing for persons with special transportation needs" means an arrangement whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider as defined in RCW 81.66.010(3) in a passenger motor vehicle as defined by the department of licensing to include small buses, cutaways, and modified vans not more than twenty-eight feet long. The driver need not be a person with special transportation needs.

(c) "Persons with special transportation needs" means those persons, including their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase appropriate transportation.

(d) "Public transportation" means the transportation of passengers by means other than chartered or sightseeing bus, together with necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems. It includes passenger services of the Washington state ferries.

(e) "Nonmotorized commuting" means commuting to and from the workplace by an employee by walking or running or by riding a bicycle or other device not powered by a motor. It does not include teleworking.

(3) **Business and occupation tax and public utility tax exemptions.** Amounts received from providing commuter ride sharing and ride sharing for persons with special transportation needs are exempt from the business and occupation tax and from the public utility tax. RCW 82.04.355 and 82.16.047.

(4) **Retail sales tax exemption.** RCW 82.08.0287 provides a retail sales tax exemption for sales of passenger motor vehicles as ride-sharing vehicles.

(a) Sales tax does not apply to sales of passenger motor vehicles used for commuter ride sharing or ride sharing for persons with special transportation needs if the vehicles are exempt from motor vehicle excise tax under RCW 82.44.015 for thirty-six consecutive months beginning within thirty days of application for exemption from sales tax. If the vehicle is used as a ride-sharing vehicle for less than thirty-six consecutive months, the registered owner must notify the department of revenue and pay the tax.

(b) Vehicles with five or six passengers, including driver, used for commuter ride sharing must be operated within a county having a commute trip reduction plan under chapter 70.94 RCW in order to be purchased without payment of sales tax. In addition, for the exemption to apply at least one of the following conditions must apply:

(i) The vehicle must be operated by a public transportation agency for the general public;

(ii) The vehicle must be used by a major employer, as defined in RCW 70.94.524, as an element of its commute trip reduction program for their employees; or

(iii) The vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work.

(5) **Use tax exemption.** RCW 82.12.0282 provides a use tax exemption for the use of passenger motor vehicles as ride-sharing vehicles.

(a) Use tax does not apply to the use of passenger motor vehicles used for commuter ride sharing or ride sharing for persons with special transportation needs if the vehicles are exempt from motor vehicle excise tax under RCW 82.44.015 for thirty-six consecutive months beginning within thirty days of application for exemption from use tax. If the vehicle is used as a ride-sharing vehicle for less than thirty-six consecutive months, the registered owner must notify the department of revenue and pay the tax.

(b) Vehicles with five or six passengers, including driver, used for commuter ride sharing must be operated within a county having a commute trip reduction plan under chapter 70.94 RCW in order to be purchased without payment of sales tax. In addition, for the exemption to apply at least one of the following conditions must apply:

(i) The vehicle must be operated by a public transportation agency for the general public;

(ii) The vehicle must be used by a major employer, as defined in RCW 70.94.524, as an element of its commute trip reduction program for their employees; or

(iii) The vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or

with a public transportation agency serving the area where the employees live or work.

(6) **Business and occupation tax and public utility tax credit.** Employers in Washington are allowed a credit against their business and occupation tax and public utility tax liability for amounts paid to or on behalf of employees for ride sharing in vehicles carrying two or more persons, using public transportation, or using nonmotorized commuting. RCW 82.04.4453 and 82.16.048. Employers must provide incentives before June 30, 2000, to be eligible for the credit. The credit program expires December 31, 2000.

(a) In most cases, the amount of the credit is equal to the amount paid to or on behalf of each employee multiplied by fifty percent, but may not exceed sixty dollars per employee per year. However, for ride sharing in vehicles carrying two persons, the credit is equal to the amount paid to or on behalf of each employee multiplied by thirty percent, but may not exceed sixty dollars per employee per year. The credit is based upon amounts paid to or on behalf of individual employees, and may not be based upon an average of amounts paid to or on behalf of employees for qualifying purposes.

(b) The credit may not exceed the amount of business and occupation tax or public utility tax that would otherwise be due for the same calendar year after all other credits are applied.

(c) An employer may not receive credit for amounts paid to or on behalf of the same employee under both the business and occupation tax and the public utility tax.

(d) The total credit received by an employer against both the business and occupation tax and the public utility tax may not exceed one hundred thousand dollars for a calendar year.

(e) The total credit granted to all employers under both the business and occupation tax and the public utility tax may not exceed one million five hundred thousand dollars for a calendar year.

(f) No credit or portion of a credit denied because of exceeding the limitations in (d) or (e) of this subsection may be used against tax liability for other calendar years.

(7) **Credit procedures.** This subsection explains the procedures used in the credit program described in subsection (6) of this rule.

(a) Persons apply for the credit by completing a ride share credit reporting schedule and filing it with the combined excise tax return covering the period for which the credit is claimed. The ride share credit reporting schedule is available upon request from the department of revenue.

(b) Persons may not apply for the credit more frequently than once per quarter nor less frequently than once per year against taxes due for the same calendar year in which the amounts for which credit is claimed were paid to or on behalf of employees.

(c) Credit must be claimed by the due date of the last tax return for the calendar year in which the payment to or on behalf of employees was made.

(i) Credit not previously claimed may not be claimed for the first time on supplemental or amended tax returns filed after the due date of the last tax return for the calendar year in which the payment to or on behalf of employees was made.

(ii) If the department of revenue has granted an extension of the due date for the last tax return for the calendar year in which the payment to or on behalf of employees was made, the credit must be claimed by the extended due date.

(d) The department of revenue tabulates the amount of credit taken by all employers on a quarterly basis. If the annual maximum of one million five hundred thousand dollars in credit is exceeded in a given quarter, no further credit will be allowed in succeeding quarters in the same calendar year. For the quarter in which the maximum is exceeded, the department of revenue calculates the amount of credit available at the beginning of the quarter and determines the proportional share of that amount for every employer who has claimed a credit in the quarter. Employers are billed for the difference between the amount of credit they claimed and the prorated amount of credit for which they are eligible.

(8) **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 results of other situations must be determined after a review of all of the facts and circumstances.

(a) An employer pays one hundred eighty dollars for a yearly bus pass for one employee. For another employee, the employer buys a bicycle helmet and bicycle lock for a total of fifty dollars. This is the total expenditure during a calendar year of amounts paid to or on behalf of employees in support of ride sharing, using public transportation, and using nonmotorized commuting. The employer may claim a credit of sixty dollars for the amount spent for the employee using the bus pass. Fifty percent of one hundred eighty dollars is ninety dollars, but the credit is limited to sixty dollars per employee. The employer may claim a credit of twenty-five dollars (fifty percent of fifty dollars) for the amount spent for the employee who bicycles to work. Even though fifty percent of two hundred thirty dollars, the amount spent on both employees, works out to be less than sixty dollars per employee, the credit is computed by looking at actual spending for each employee and not by averaging the spending for both employees.

(b) An employer provides parking spaces for the exclusive use of ride-sharing vehicles. Amounts spent for signs, painting, or other costs related to the parking spaces do not qualify for the credit. This is because the credit is for financial incentives paid to or on behalf of employees. While the parking spaces support the use of ride-sharing vehicles, they are not financial incentives and do not involve amounts paid to or on behalf of employees.

(c) As part of its commute trip reduction program, an employer pays the cab fare for an employee who has an emergency and must leave the workplace but has no vehicle available because he or she commutes by ride-sharing vehicle. The cab fare qualifies for the credit, if it does not cause the sixty dollar limitation to be exceeded, because it is an amount paid on behalf of a specific employee.

[Statutory Authority: RCW 82.32.300, 82.04.4453 and 82.16.048. 99-08-035, § 458-20-261, filed 3/31/99, effective 5/1/99.]

WAC 458-20-263 Wind, landfill gas, and solar energy electric generating facilities sales and use tax exemption. (1) Introduction. This rule explains the retail

sales and use tax exemptions provided by RCW 82.08.02567 and 82.12.02567 for the sale and/or use of machinery and equipment used directly in generating electricity using wind, landfill gas, or solar energy as the principal source of power. These exemptions expire on June 30, 2005.

(2) **Definitions.** The following definitions apply to this section:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using the wind, landfill gas, or solar energy as the principal source of power.

(i) "Machinery and equipment," where solar energy is the principal source of power, includes, but is not limited to: Solar modules; power conditioning equipment; batteries; transformers; power poles; power lines; and connectors to the utility grid system.

(ii) "Machinery and equipment," where wind is the principal source of power, includes, but is not limited to: Turbines; blades; generators; towers and tower pads; substations; guy wires and ground stays; control buildings; power conditioning equipment; anemometers; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system.

(iii) "Machinery and equipment," where landfill gas is the principal source of power, includes, but is not limited to: Turbines; blades; blowers; burners; heat exchangers; generators; towers and tower pads; substations; guy wires and ground stays; control buildings; pipe; valves; power conditioning equipment; pressure control equipment; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system.

(iv) "Machinery and equipment" does not include: The utility grid system and any tangible personal property used to connect electricity directly to consumers; hand tools; property with a useful life of less than one year; repair parts required to restore machinery and equipment to normal working order; replacement parts that do not increase productivity, improve efficiency, or extend the useful life of the machinery and equipment; buildings; or building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.

(b) "Used directly" means the machinery and equipment provides any part of the process that captures the energy of the wind, landfill gas, or solar, converts that energy to electricity, and transforms or transmits that electricity for entry into electric transmission and distribution systems.

(c) "Installation charges" means sales of or charges made for labor and services rendered in respect to installing the machinery and equipment.

(i) Labor and services to install machinery and equipment includes both the charges for labor and charges for the rental of equipment with an operator.

(ii) Labor and services to install machinery and equipment does not include the rental of tangible personal property used by the buyer to install machinery and equipment. See WAC 458-20-211.

(3) **Retail sales tax exemption.** The retail sales tax does not apply to the purchase or lease of machinery and equipment used directly in generating electricity using wind, land-

fill gas, or solar energy as the principal power source, but only if the purchaser develops with such machinery and equipment a facility capable of generating not less than two hundred kilowatts of electricity. Retail sales tax also does not apply to installation charges for this machinery and equipment. RCW 82.08.02567.

(a) The exemption is effective July 1, 1996, for machinery and equipment using wind and solar energy, and April 3, 1998, for machinery and equipment using landfill gas (chapter 309, Laws of 1998).

(b) Prior approval is not required from the department of revenue in order to claim the retail sales tax exemption. However, the buyer is required to provide the seller with an exemption certificate. The seller must retain a copy of the certificate to document the exemption.

The exemption certificate may be:

(i) Issued for each purchase; or

(ii) In blanket form certifying all future purchases as being exempt from sales and use tax. Blanket forms must be renewed every four years.

(c) This certificate should be in substantially the following form:

Sales and Use Tax Exemption Certificate for Wind, Landfill Gas, or Solar Powered Electrical Generation Facilities

The buyer (user) certifies that the items listed below are machinery and equipment, or are labor and services rendered to install the machinery and equipment, used directly in generating electricity using the wind, landfill gas, or solar energy as the principal source of power at a facility capable of generating not less than two hundred kilowatts of electricity, and that such purchase is exempt from the retail sales tax under RCW 82.08.02567. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

Buyer (User) UBI/Registration #
Name of Buyer (User)
Address of Buyer (User)
Seller UBA/Registration #
Name of Seller. Date
Item or category of items
Buyer or Buyer's Agent
(Print)
Authorized signature Title
Date

(4) **Use tax.** The law provides a corresponding use tax exemption for the use of machinery and equipment used directly in generating not less than two hundred kilowatts of electricity using wind, landfill gas, or solar energy as the principal source of power. RCW 82.12.02567. The use tax exemption is effective July 1, 1996, machinery and equipment, using wind and solar energy and April 3, 1998, for machinery and equipment using landfill gas (chapter 309, Laws of 1998).

(5) **Time of sale.** The existing rules pertaining to time and place of sale and when tax liability arises apply for purposes of whether a given transaction occurred on or after the effective date of the law. The effective date with respect to machinery and equipment used to generate electricity using

wind or solar energy is July 1, 1996, and, machinery and equipment using landfill gas, April 3, 1998. See WAC 458-20-103, 458-20-178, and 458-20-197.

(a) In the case of an outright purchase of goods, the sale takes place when the goods are delivered to the buyer in this state. Thus, machinery and equipment delivered to the buyer on or after July 1, 1996, or April 3, 1998, respectively, can qualify for exemption, regardless of when the order for the goods was placed.

(b) If machinery and equipment is acquired without payment of retail sales tax, use tax is due at the time of first use. Thus, machinery and equipment for electricity generating facilities using wind or solar energy which is first put to use after July 1, 1996, can qualify for the exemption. See WAC 458-20-178.

(c) In the case of leases or rentals of tangible personal property, liability for sales tax arises as of the time the lease or rental payment falls due. Thus, in the case of leased machinery and equipment using landfill gas, rental payments that fall due on or after April 3, 1998, can qualify for exemption, regardless of when the lease was initiated.

[Statutory Authority: RCW 82.32.300, 99-11-106, § 458-20-263, filed 5/19/99, effective 6/19/99. Statutory Authority: RCW 82.32.300 and 82.08.02567, 97-03-027, § 458-20-263, filed 1/8/97, effective 2/8/97.]

Chapter 458-29A WAC LEASEHOLD EXCISE TAX

WAC

458-29A-100	Leasehold excise tax—Overview and definitions.
458-29A-200	Leasehold excise tax—Taxable rent and contract rent.
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458-29A-600	Leasehold excise tax—Collection and administration.

WAC 458-29A-100 Leasehold excise tax—Overview and definitions. (1) **Introduction.** Chapter 82.29A RCW establishes an excise tax on the act or privilege of occupying or using publicly owned real or personal property through a leasehold interest. The intent of the law is to ensure that lessees of property owned by public entities bear their fair share of the cost of governmental services when the property is rented to someone who would be subject to property taxes if the lessee were the owner of the property. The tax is an excise tax triggered by the private use and possession of the public property. RCW 82.29A.030.

(2) **Definitions.** For the purposes of chapter 458-29A WAC, the following definitions apply unless the context requires otherwise.

(a) "Department" means the department of revenue.

(b) "Concession" means the right to operate a business in an area of public property.

(c) "Contract rent" means that portion of the payment made by a lessee (including a sublessee) to a public lessor (or to a third party for the benefit of that lessor) for a leasehold interest in land and improvements or tangible personal property.

(d) "Franchise" means a right granted by a public entity to a person to do certain things that the person could not otherwise do. A franchise is distinguishable from a leasehold

interest even when its exercise and value is inherently dependent upon the use and possession of publicly owned property.

(e) "Improvement" means a modification to real property, resulting in an actual change in the nature of the property or an increase in the value of the property. It is distinguishable from routine repair and maintenance, which are activities resulting from normal wear and tear associated with the use of property, and which do not result in a change in the nature or value of the property itself. For example, replacing worn boards in a stairway is repair and maintenance; removing the stairway and replacing it with an elevator or a ramp is an improvement.

(f) "Leasehold interest" means an interest granting the right to possession and use of publicly owned real or personal property as a result of any form of agreement, written or oral, without regard to whether the agreement is labeled a lease, license, or permit.

(i) Regardless of what term is used to label an agreement providing for the use and possession of public property by a private party, it is necessary to look to the actual substantive arrangement between the parties in order to determine whether a leasehold interest has been created.

(ii) Both possession and use are required to create a leasehold interest, and the lessee must have some identifiable dominion and control over a defined area to satisfy the possession element. The defined area does not have to be specified in the agreement but can be determined by the practice of the parties. This requirement distinguishes a taxable leasehold interest from a mere franchise, license, or permit.

For example, Sam sells hot dogs from his own trailer at varying sites within a county fairgrounds during events. Sam is not assigned a particular place to set up his trailer nor does he store his trailer on the fairground between events. Sam's right to sell and his use of the property is considered a franchise and not a leasehold interest. The necessary element of possession, involving a greater degree of dominion and control over a more defined area, is lacking.

(iii) The use or occupancy of public property where the purpose of such use or occupancy is to render services to the public owner does not create a leasehold interest. The lessee's possession and use of the property is in furtherance of the public owner's purposes, and it is the public owner who benefits from the governmental services rendered in respect to the property.

For example, Contractor A operates a snack bar at a publicly owned facility where food and beverages are sold to members of the public, and derives a profit from the proceeds of the snack bar sales. Contractor B operates a cafeteria where food is provided at no charge to persons with appropriate I.D., and is reimbursed on a cost-plus basis. Contractor A is engaged in a business enterprise the same as any other restaurateur. Contractor A is using the public property for a private purpose, and has a taxable leasehold interest on the premises. Contractor B is merely providing a service to government personnel that the government agency would otherwise provide. Contractor B is using public property for a public purpose, and does not have a taxable leasehold interest.

(iv) "Leasehold interest" includes the use and occupancy by a private party of property that is owned in fee simple, held in trust, or controlled by a public corporation, commis-

sion, or authority created under RCW 35.21.730 or 35.21.660 if:

(A) The property is within a special review district established by ordinance after January 1, 1976; or

(B) The property is listed on, or is within a district listed on, any federal or state register of historical sites in existence after January 1, 1987.

(v) "Leasehold interest" does not include:

(A) Road or utility easements;

(B) Rights of access, occupancy, or use granted solely for the purpose of removing materials or products purchased from a public owner or the lessee of a public owner, including permits to graze livestock, cut brush, pick wild mushrooms, or mine ore; and

(C) Any right to use personal property (excluding land or buildings) owned by the United States (as a trustee or otherwise), or by a foreign government, when the right to use the property is granted by a contract solely to manufacture or produce articles for sale to the United States or the foreign government.

(g) "Lessee" means a private person or entity with a leasehold interest in public property who would be subject to property tax if the person or entity owned the property in fee.

(h) "Lessor" or "public lessor" means an entity exempted from property tax obligations pursuant to Article 7, section 1 of the state Constitution that grants a leasehold interest in public property to a private person or entity.

(i) "License" means permission to enter on land for some purpose, without conferring any rights to the land upon the person granted the permission. For example, a permit to enter federal lands to launch rafts into the water for the purpose of conducting whitewater river rafting tours is a license, not a leasehold interest.

(j) "Management agreement" means a written agency agreement between a public property owner and a private person or entity for the use and possession of public property under the following circumstances:

(i) The public property owner retains all liability for payment of business operating costs and business related damages (other than costs and damages attributable to the activities of the private party);

(ii) The public property owner has title and ownership of all receipts from sales of services or products relating to the management agreement (whether such amounts are collected by the private party on behalf of the public owner or whether the public owner permits the private party to retain a portion of the receipts as payment for services rendered by the private party), and the full discretion of whether to eliminate, reduce or expand the business activity conducted on the property; and

(iii) The public property owner has full control of the prices to be charged for the goods or services provided in the course of use of the property.

If each of these criteria is met, the arrangement between the parties is considered a "true" management agreement which does not, by itself, create a taxable leasehold interest in the property.

(k) "Permit" means a written document creating a license to enter land for a specific purpose.

(l) "Product lease" means a lease of public property which will be used to produce agricultural or marine products (aquaculture) wherein the lease or agreement requires that:

(i) The leasehold payment be made by delivering a stated percentage of the agricultural or marine products to the credit of the lessor; or

(ii) The lessor be paid a stated percentage of the proceeds from the sale of the agricultural or marine products.

(m) "Public property" means all property owned by an entity exempted from property tax obligations pursuant to Article 7, section 1 of the state Constitution (and, in some instances, property held in trust by the United States).

(n) "Renegotiated" means a change in the leasehold agreement, other than one specifically required by the terms of the agreement itself, which alters:

(i) The agreed time of possession and use of the property;

(ii) The restrictions on the manner in which the property may be used; or

(iii) The rate of cash rental or other consideration paid by the lessee to or for the benefit of the lessor.

The term also includes the continued possession of the property by the lessee beyond the original date when, according to the terms of the agreement, the lessee had the right to vacate the premises without incurring further liability to the lessor.

(o) "Taxable rent" means the amount of rent upon which the measure of leasehold excise tax is based. It is either the contract rent or an amount established by the department in accordance with the procedures set forth in RCW 82.29A.020(2). (See also WAC 458-29A-200.)

(p) "Utility easement" means the right to use publicly owned land for the purpose of providing access or installation of publicly regulated utilities.

[Statutory Authority: RCW 82.29A.140, 99-20-053, § 458-29A-100, filed 10/1/99, effective 11/1/99.]

WAC 458-29A-200 Leasehold excise tax—Taxable rent and contract rent. (1) Introduction. Ordinarily, the amount of taxable rent is the amount of contract rent paid by a lessee for a taxable leasehold interest. The law does authorize the department to establish a taxable rent different from the contract rent in certain cases. This rule explains the exclusions of certain moneys and other property received by or on behalf of a lessor from the measure of contract rent. It also explains the conditions under which the department is authorized to establish a taxable rent different from the contract rent.

(2) **Contract rent exclusions.** Even when a leasehold interest is present, not all payments made to a lessor constitute taxable contract rent. For example, payments made to or on behalf of the lessor for actual utility charges, janitorial services, security services, repairs and maintenance, and for special assessments such as storm water impact fees attributable to the lessee's space or prorated among multiple lessees, are not included in the measure of contract rent, if the actual charges are separately stated and billed to the lessee(s). "Utility charges" means charges for services provided by a public service business subject to the public utility tax under chapter 82.16 RCW, and, for the purpose of this section only, also

includes water, sewer, and garbage services and cable television services.

In some circumstances a private lessee that is occupying or using public property may collect fees from third parties and remit them to the public lessor. In those situations where:

(a) The fee structure, rate, or amount collected by the private party is established by or subject to the review and approval of the public lessor or other public entity; and

(b) The amounts received by the private entity from third parties are remitted entirely to the public lessor or credited to the account of the public lessor, those amounts are not considered part of the contract rent under this chapter, provided that nothing in this section shall preclude or prevent the imposition of tax, as appropriate, under any other chapter of Title 82 RCW on any amounts retained by or paid to the private entity as consideration for services provided to the public property owner.

Notwithstanding the provisions of this subsection, if such deductions are determined by the department to reduce the amount of contract rent to a level below market value, the department may establish a taxable rent in accordance with section (6) below.

For example, Dan leases retail space in a building owned by the Port of Whistler. He pays \$800 per month for the space, which includes building security services. Additionally, he is assessed monthly for his pro rata share of actual janitorial and utility services provided by the Port. The Port determines Dan's share of these charges in the following manner: The average annual amount actually paid by the Port for utilities in the prior year is divided by 12. Dan's space within the building is approximately ten percent of the total space in the building, so the averaged monthly charge is multiplied by .10 (Dan's pro rata share based upon the amount of space he leases), and that amount is added to Dan's monthly statement as a line item charge for utilities, separate from the lease payment. The charges for janitorial services are treated in the same manner. In this case, Dan's payment for utilities and janitorial services are not included in the measure of contract rent. His payments for security services are included in the measure of contract rent, and subject to the leasehold excise tax, because they are not calculated and charged separately from the lease payments.

Contract rent also does not include:

(a) Expenditures made by the lessee for which the lease agreement requires the lessor to reimburse the lessee;

(b) Expenditures made by the lessee for improvements and protection if the lease or agreement requires the improved property to be open to the general public (e.g., a public boat launch) and prohibits the lessee from enjoying any profit directly from the lease;

(c) Expenditures made by the lessee to replace or repair the facilities due to fire or other catastrophic event including, but not necessarily limited to, payments:

(i) For insurance to reimburse losses;

(ii) To a public or private entity to protect the property from damage or loss; or

(iii) To a public or private entity for alterations or additions made necessary by an action of government which occurred after the date the lease agreement was executed.

(d) Improvements added to public property if the improvements are taxed as any person's personal property.

(3) **Combined payments.** When the payment for a leasehold interest is made in combination with payment for concession, franchise or other rights granted by the public lessor, only that part of the payment which represents consideration for the leasehold interest is considered part of the contract rent. For example, if the payment made by the lessee to the public lessor exceeds the fair market rental value for comparable property with similar use, the excess is generally attributable to payment for a concession or other right.

(4) **Lease payments based on a percentage of sales.** The measure of contract rent subject to the leasehold excise tax may be based upon a lease which provides that the rent shall be a percentage of business proceeds. The manner in which the rent is calculated does not, in itself, determine the character of the underlying right or interest for which the payment is made.

(5) **Expenditures for improvements.** Expenditures by the lessee for nonexcludable improvements (see WAC 458-29A-200(2)) with a useful life of more than one year will be treated as prepaid contract rent if the expenditures were intended by the parties to be included as part of the contract rent. Such intention may be demonstrated by a contract provision granting ownership or possession and use to the public owner of the underlying property and/or by the conduct of the parties. These expenditures should be prorated over the useful life of the improvement, or over the remaining term of the lease or agreement if the useful life of the improvement exceeds that term. If the lessee vacates prior to the end of the lease without the agreement of the lessor, thereby defaulting on the lease, no additional LET is due for the term remaining pursuant to the contract between the lessor and that lessee.

(6) **Department's authority to establish taxable rent.** RCW 82.29A.020(2) authorizes the department to establish a "taxable rent" that is different from contract rent in some situations.

(a) If the department determines that a lessee has a leasehold interest in publicly owned property and that such leasehold interest has not been established through competitive bidding, or negotiated in accordance with statutory requirements regarding the rent payable, or negotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor, the department may establish a taxable rent computation for use in determining the tax payable under authority granted under chapter 82.29A RCW. The department shall base its computation on the following criteria:

(i) Consideration shall be given to rent being paid to other lessors by lessees of similar property for similar purposes over similar periods of time; or

(ii) Consideration shall be given to what would be considered a fair rate of return on the market value of the property leased less reasonable deductions for any restrictions on use, special operating requirements or provisions for concurrent use by the lessor, another person or the general public.

(b) If the department establishes taxable rent pursuant to RCW 82.29A.020(2), and the contract rent was established in accordance with the procedures set forth in that section, but the lease is ten or more years old and has not been renegotiated

ated, the taxable rent for leasehold excise tax purposes shall be prospective only. However, if upon examination the department determines that the contract rent was not set in accordance with the statutory provisions of RCW 82.29A.020(2) and the rent is below fair market rate, the department may (and in most instances, will) apply the taxable rental rate retroactively for purposes of determining the leasehold excise tax, subject to the provisions of RCW 82.32.050(3).

(c) The department will not establish taxable rent if one of the following four situations apply:

(i) The leasehold interest has been established or renegotiated through competitive bidding;

(ii) The rent was set or renegotiated according to statutory requirements;

(iii) Public records demonstrate that the rent was the maximum attainable; or

(iv) A lease properly established or renegotiated in compliance with (6)(c)(i), (ii), or (iii) has been in effect for ten years or less without renegotiation.

(d) Where the contract rent has been established in accordance with one of the first three criteria set forth above, and the lease agreement has not been in effect for ten years or more, or has been properly renegotiated within the past ten years, the taxable rent is deemed to be the stated contract rent.

(e) If land on the Hanford reservation is subleased to a private or public entity by the state of Washington, "taxable rent" means only the annual cash rental payment made by the sublessee to the state and specifically referred to as rent in the sublease agreement.

[Statutory Authority: RCW 82.29A.140, 99-20-053, § 458-29A-200, filed 10/1/99, effective 11/1/99.]

WAC 458-29A-400 Leasehold excise tax—Exemptions. (1) **Introduction.** RCW 82.29A.130 establishes a number of exemptions from the leasehold excise tax. To be exempt from the leasehold excise tax, the property subject to the leasehold interest must be used exclusively for the purposes for which the exemption is granted.

(2) **Operating properties of a public utility.** All leasehold interests that are part of the operating properties of a public utility are exempt from leasehold excise tax if the leasehold interest is assessed and taxed as part of the operating property of a public utility under chapter 84.12 RCW. For example, tracks leased to a railroad company at the Port of Seaside are exempt from leasehold excise tax because the railroad is a public utility assessed and taxed under chapter 84.12 RCW and the tracks are part of the railroad's operating properties.

(3) **Nonprofit schools and colleges.** All leasehold interests in facilities owned or used by a public school, college, or university to provide housing to students are exempt from leasehold excise tax if the student housing is exempt from property tax under RCW 84.36.010 and 84.36.050. For example, the leasehold interest associated with a building used as a dormitory for Public University students is exempt from the leasehold excise tax.

(4) **Subsidized housing.** All leasehold interests of subsidized housing are exempt from leasehold excise tax if the United States, the state of Washington, or any political subdivi-

sion owns the property in fee simple and residents of the housing are subject to specific income qualification requirements. For example, a leasehold interest in an apartment house that is subsidized by the Federal Department of Housing and Urban Development is exempt from leasehold excise tax if the property is owned by the state of Washington and residents are subject to income qualification requirements.

(5) **Nonprofit fair associations.** All leasehold interests used for fair purposes of a nonprofit fair association are exempt from leasehold tax if the fair association sponsors or conducts a fair or fairs supported by revenues collected under RCW 67.16.100 and allocated by the director of the department of agriculture. The property must be owned in fee simple by the United States, the state of Washington, or any public political subdivision. However, if a nonprofit association subleases exempt property to a third party, the sublease is a taxable leasehold interest. For example, a leasehold interest held by the Local Nonprofit Fair Association is considered exempt from leasehold excise tax. However, if buildings on the fairgrounds are rented to private parties for storage during the winter, these rentals may be subject to the leasehold excise tax.

(6) **Public employee housing.** All leasehold interests in public property used as a residence by an employee of the public owner are exempt from leasehold tax if the employee is required to live on the public property as a condition of his or her employment. For example, a cabin used as a residence by a forest ranger in the Northwest National Forest is exempt from leasehold excise tax if the cabin is owned by the United States, the ranger is employed by the U.S. Forest Service (an agency of the United States government), and the ranger is required to live in the Northwest National Forest as a condition of his/her employment.

(7) **Interests held by enrolled Indians.** Leasehold interests held by enrolled Indians are exempt from leasehold excise tax if the lands are owned or held by any Indian or Indian tribe, and the fee ownership of the land is vested in or held in trust by the United States, unless the leasehold interests are subleased to a lessee which would not qualify under chapter 82.29A RCW, RCW 84.36.451 and 84.40.175 and the tax on the lessee is not preempted due to the balancing test (see WAC 458-20-192).

Any leasehold interest held by an enrolled Indian or a tribe, where the leasehold is located within the boundaries of an Indian reservation, on trust land, on Indian country, or is associated with the treaty fishery or some other treaty right, is not subject to leasehold excise tax. For example, if an enrolled member of the Puyallup tribe leases port land at which the member keeps his or her boat, and the boat is used in a treaty fishery, the leasehold interest is exempt from the leasehold tax. For more information on excise tax issues related to enrolled Indians, see WAC 458-20-192 (Indians—Indian reservations).

(8) **Leases on Indian lands to non-Indians.** Leasehold interests in any real property of any Indian or Indian tribe, band, or community held in trust by the United States or subject to a restriction against alienation imposed by the United States that are held by a non-Indian not otherwise exempt from tax due to the application of the balancing test under WAC 458-20-192 are exempt from leasehold excise tax if the

amount of contract rent paid is greater than or equal to ninety percent of fair market rental value. In determining whether the contract rent of such lands meets the required level of ninety percent of market value, the department will use the same criteria used to establish taxable rent under RCW 82.29A.020 (2)(b) (WAC 458-29A-200).

For example, Harry leases land held in trust by the United States for the Yakima tribe for the sum of \$900 per month. The fair market value for similar lands used for similar purposes is \$975 per month. The lease is exempt from the leasehold tax because Harry pays at least ninety percent of the fair market value for the qualified lands. For more information on the preemption analysis and other tax issues, see WAC 458-20-192.

(9) Annual taxable rent is less than two hundred fifty dollars. Leasehold interests for which the taxable rent is less than \$250 per year are exempt from leasehold tax. For the purposes of this exemption, if the same lessee has a leasehold interest in two or more contiguous parcels of property owned by the same public lessor, the taxable rent for each contiguous parcel will be combined and the combined taxable rent will determine whether the threshold established by this exemption has been met. To be considered contiguous, the parcels must be in closer proximity than merely within the boundaries of one piece of property. When determining the annual leasehold rent, the department will rely upon the actual substantive agreement between the parties. Rent payable pursuant to successive leases between the same parties for the same property within a twelve-month period will be combined to determine annual rent; however, a single lease for a period of less than one year will not be projected on an annual basis.

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

(a) The yacht club rents property from the Port of Bay City for its clubhouse and moorage. It also rents a parking stall for its commodore. The parking stall is separated from the clubhouse only by a common walkway. The parking stall lease is a part of the clubhouse lease because it is contiguous to the clubhouse, separated only by a necessary walkway.

(b) Ace Flying Club rents hangars, tie downs, and ramps from the Port of Desert City. It has separate leases for several parcels. The hangars are separated from the tie down space by a row of other hangars, each of which is leased to a different party. Common ramps and roadways also separate the club's hangars from its tie-downs. The hangars, because they are adjacent to one another, create a single leasehold interest. The tie downs are a separate taxable leasehold interest because they are not contiguous with the hangars used by Ace Flying Club.

(c) Grace leases a lot from the City of Flora, from which she sells crafts at different times throughout the year. She pays \$50 per month for the lot, and has a separate lease for each season during which she sells. She has one lease from May through September, and a separate lease for the time between Thanksgiving and Christmas, which might run thirty to forty days, depending on the year. The leases will be combined for the purposes of determining the leasehold excise

tax. They relate to the same piece of property, for the same activity by the same lessee, and occur within the same year.

(d) Elizabeth owns a Christmas tree farm. Every year she rents a small lot from the Port of Capital City, adjacent to its airport, to sell Christmas trees. She pays \$125 to the port to rent the lot for 6 weeks. It is the only time during the year that she rents the lot. Her lease is exempt from the leasehold excise tax, because it does not exceed \$250 per year in taxable rent.

(10) Leases for a continuous period of less than thirty days. Leasehold interests that provide use and possession of public property for a continuous period of less than thirty days are exempt from leasehold tax. In determining the duration of the lease, the department will rely upon the actual agreement and/or practice between the parties. If a single lessee is given successive leases or lease renewals of the same property, the arrangement is considered a continuous use and possession of the property by the same lessee. A leasehold interest does not give use and possession for a period of less than thirty days based solely on the fact that the public lessor has reserved the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(11) Month-to-month leases in residential units to be demolished or removed. Leasehold interests in properties rented for residential purposes on a month-to-month basis pending destruction or removal for construction of a public highway or building are exempt from the leasehold excise tax. For example, if the state or other public entity has acquired private properties for highway expansion, airport expansion, or capitol campus expansion, and rents those residential units pending their removal for construction, these leases do not create taxable leasehold interests. This exemption does not require evidence of imminent removal of the residential units; the term "pending" merely means "while awaiting." The exemption is based upon the purpose for which the public entity holds the units. For example, State University has obtained capital development funding for the construction of new campus buildings, and has purchased a block of residential property adjacent to campus for the sole purpose of expansion. Jim leases these houses from State University pursuant to a month-to-month rental agreement and rents them to students. Construction of the new buildings is not scheduled to begin for two years. Jim is not subject to the leasehold excise tax, because State University is holding the residential properties for the sole purpose of expanding its facilities, and Jim is leasing them pending their certain, if not imminent, destruction.

(12) Public works contracts. Leasehold interests in publicly owned real or personal property held by a contractor solely for the purpose of a public improvements contract or work to be executed under the public works statutes of Washington state or the United States are exempt from leasehold tax. To receive this exemption, the contracting parties must be the public owner of the property and the contractor that performs the work under the public works statutes.

For example, during construction of a second deck on the Nisqually Bridge pursuant to a public works contract between the state of Washington and Tinker Construction, any leasehold interest in real or personal property created for Tinker solely for the purpose of performing the work neces-

sary under the terms of the contract is exempt from leasehold tax.

(13) **Correctional industries in state adult correctional facilities.** Leasehold interests for the use and possession of state adult correctional facilities for the operation of correctional industries under RCW 72.09.100 are exempt from leasehold tax. For example, a profit or nonprofit organization operating and managing a business within a state prison under an agreement between it and the department of corrections is exempt from leasehold tax for its use and possession of state property.

(14) **Camp facilities for disabled persons.** Leasehold interests in a camp facility are exempt from leasehold tax if the property is used to provide organized and supervised recreational activities for disabled persons of all ages, and for public recreational purposes, by a nonprofit organization, association, or corporation which would be exempt from property tax under RCW 84.36.030(1) if it owned the property. For example, a county park with camping facilities leased to a nonprofit charitable organization is exempt from leasehold tax if the nonprofit allows the property to be used by the general public for recreational activities throughout the year, and to be used as a camp for disabled persons for two weeks during the summer.

(15) **Public or entertainment areas of certain baseball stadiums.** Leasehold interests in public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy, located in a county with a population of over one million people, with a seating capacity of over forty thousand, and constructed on or after January 1, 1995, are exempt from leasehold excise tax.

"Public or entertainment areas" for the purposes of this exemption include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public areas, public rest rooms, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or that are used for the production of the entertainment event or other public usage, and any other personal property used for such purposes. "Public or entertainment areas" does not include locker rooms or private offices used exclusively by the lessee.

(16) **Public or entertainment areas of certain football stadiums and exhibition centers.** Leasehold interests in the public or entertainment areas of an open-air stadium suitable for national football league football and for Olympic and world cup soccer, with adjacent exhibition facilities, parking facilities, and other ancillary facilities constructed on or after January 1, 1998, are exempt from leasehold excise tax. For the purpose of this exemption, the term "public and entertainment areas" has the same meaning as set forth in subsection (15) above.

(17) **Public facilities districts.** All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW are exempt from leasehold excise tax.

(18) **State route 16 corridor transportation systems.** All leasehold interests in the state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW are exempt from leasehold excise tax.

[Statutory Authority: RCW 82.29A.140, 99-20-053, § 458-29A-400, filed 10/1/99, effective 11/1/99.]

WAC 458-29A-500 Leasehold excise tax—Liability.

(1) **Introduction.** The event triggering a leasehold excise tax liability is the use by a private person or entity of publicly owned, tax-exempt property.

Where a lessee is also a tax-exempt government entity, the tax will apply against a private sublessee, even though no contractual arrangement exists between the sublessee and the public lessor.

(2) **Lessor's responsibility to collect and remit tax.** The public lessor is responsible for collecting and remitting the leasehold excise tax from its private lessees. If the public lessor collects the leasehold excise tax but fails to remit it to the department, the public lessor is liable for the tax.

(a) Where the public lessor has attempted to collect the tax, but has received neither contract rent nor leasehold excise tax from the lessee, the department will proceed directly against the lessee for payment of the tax and the lessee shall be solely liable for the tax, provided, the lessor notifies the department in writing when the lessor is unable to collect rent and/or taxes, and the amount of the leasehold excise tax arrearage is \$1000 or greater. If the lessor fails to notify the department, the department may, in its discretion, look to the public lessor for payment of the tax.

(b) If, upon examining all of the facts and circumstances, the department determines that the public lessor in good faith believed the lessee to be exempt from all or part of the leasehold excise tax, the department will look to the public lessor for assistance in collection of the tax due, but will not hold the public lessor personally liable for payment of such tax. To satisfy the requirement of "good faith" the public lessor must have acted with reasonable diligence and prudence to determine whether the leasehold excise tax was due from the lessee.

(3) The following examples, while not exhaustive, illustrate some of the circumstances in which a public lessor may or may not be held liable for the leasehold excise tax. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(a) Doug has been newly hired in the accounting department at City Port and is assigned the responsibility for its rental accounts. He is unaware of the leasehold excise tax laws and fails to bill new tenants for the leasehold excise tax. In this situation, City Port does not avoid possible liability for the tax. Accounting errors and lack of knowledge regarding City Port's responsibility to collect and remit the leasehold excise tax do not qualify as reasonable diligence and prudence.

(b) Sybil rents an apartment in a building owned by State University but she is not a student of the University and the building is not used for student housing. She pays \$900 per month in rent. The terms of the lease require her to give at

least thirty days' notice of intent to vacate. In the month of March, she fails to pay her rent, and State University serves her with a notice to pay or quit the premises. On April 1, she sends a check to State University for \$2016 (two months' rent, plus leasehold excise tax). The bank does not honor the check, and Sybil abandons the premises in mid-April without notice. When State University discovers that she has left, it timely notifies the department of the unpaid rent and leasehold excise tax. State University has acted with reasonable prudence and diligence and will not be held liable for the unpaid leasehold excise tax. In serving Sybil with a notice to pay or quit when she first defaulted, State University attempted to mitigate the amount of rent and taxes which were unpaid, and it complied with all other requirements regarding its duty to report the arrearages to the department.

(c) Sonata City owns several houses on property which may be used in the future for office buildings, a fire station, or perhaps a park, depending on its future needs. The city leases the houses on six-month terms, mainly to students who attend the local college. Over the past four years that the city has rented the properties, it has not collected leasehold excise tax from the tenants, because city officials believed the property to be exempt since they planned someday to use the property for a public purpose. Following an audit, it is determined that there is no definite plan for destruction of the houses nor any funds allocated for construction of public buildings on the site. Further, the houses were not rented on a month-to-month basis. Therefore, leasehold excise tax is due. Most of the prior tenants have left the area, and there is no convenient way for the city to collect the unpaid leasehold tax. Sonata City is liable for the tax because although its managers did not believe the tax was due, the lack of knowledge regarding the city's responsibility to collect and remit the leasehold excise tax does not qualify as reasonable diligence and prudence. Sonata City had a duty to make a good faith effort to determine its obligations under the applicable leasehold excise tax statutes and rules.

[Statutory Authority: RCW 82.29A.140, 99-20-053, § 458-29A-500, filed 10/1/99, effective 11/1/99.]

WAC 458-29A-600 Leasehold excise tax—Collection and administration. (1) **Introduction.** Leasehold excise tax is levied by the state under RCW 82.29A.030 and by counties and/or cities under RCW 82.29A.040. The administrative procedures contained in chapters 82.02 and 82.32 RCW apply to the administration and collection of the leasehold excise tax.

(2) **Tax imposed.** The rates at which leasehold excise tax is levied are contained in RCW 82.29A.030 and 82.29A.040. The department publishes documents containing the applicable rates, credits, and formulas. These documents are updated as necessary and are available upon request.

(3) **Separate listing requirement.** The amount of leasehold excise tax due must be listed separately from the amount of contract rent on any statement or other document provided to the lessee by the lessor. If the leasehold excise tax is not stated separately from the contract rent, it is assumed that the leasehold excise tax is not included in the amount stated as due.

(4) **Credits allowed against leasehold excise tax.** Because the leasehold excise tax is intended only to equalize treatment between private property owners and lessees of public entities, the amount of leasehold excise tax should not exceed the amount of property tax that would be due if the leased property was privately owned. Therefore, in calculating the taxes imposed under RCW 82.29A.030 and 82.29A.040, RCW 82.29A.120 authorizes the following credits:

(a) **Leasehold interests created after April 1, 1986, or situations where the department has established taxable rent.** Where a leasehold interest other than a product lease was created after April 1, 1986, or where the department has established taxable rent in accordance with RCW 82.29A.020 (2)(b), and the amount of leasehold excise tax due is greater than the amount of property tax that would be due if the property was privately owned by the lessee, without regard to any property tax exemption under RCW 84.36.381, a credit equal to the difference between the leasehold excise tax and the comparable property tax will be allowed.

If the property is subleased, the credit must be passed on to the sublessee. Lessees and sublessees of residential property who would qualify for either a partial or total exemption from property tax under RCW 84.36.381 if they owned the property in fee are eligible for a corresponding reduction in the amount of leasehold excise tax due. The leasehold excise tax for the qualifying lessees or sublessees is reduced by the same percentage as the percentage reduction in property that would result from the property tax exemption under RCW 84.36.381.

(b) **Product leases.** A credit of thirty-three percent of the total leasehold excise tax due is allowed for product leases.

(5) **When payment is due.** The leasehold excise taxes are due on the same date that the contract rent is due to the lessor. If the contract rent is paid to someone other than the lessor, the leasehold tax is due at the time the payment is made to that other person or entity. Any prepaid contract rent will be deemed to have been paid in the year due and not in the year in which it was actually paid if the prepayment is for more than one year's rent. If contract rent is prepaid, the leasehold tax payment may be prorated over the number of years for which the contract rent is prepaid. The prorated portion of the tax will be due in two installments per year, with no less than one-half due on or before May 31 and the second half due no later than November 30 of each year.

(6) **Collection and distribution of tax by the department.** The department collects and distributes the leasehold excise taxes authorized by RCW 82.29A.030 and 82.29A.040.

(a) **Taxes levied by the state.** All money received by the department from leasehold taxes levied under RCW 82.29A.030 is transmitted to the state treasurer for deposit in the general fund.

(b) **Taxes levied by counties and cities.** Prior to the effective date of the ordinance imposing a leasehold excise tax, the county or city imposing the tax must contract with the department for administration and collection services. The department may deduct a percentage, not to exceed two percent, of the taxes collected as reimbursement for administra-

tion and collection expenses. The department deposits the balance of the taxes collected in the local leasehold excise tax account with the state treasury, and the state treasurer bimonthly distributes those moneys to the counties and cities.

County treasurers must proportionately distribute the moneys they receive in the same manner they distribute moneys collected from property tax levies in accordance with RCW 84.56.230, provided that no moneys are to be distributed to the state or any city, and the pro rata calculation for proportionate distribution cannot include any levy rates by the state or any city.

(7) **Leasehold interests in federally owned land or federal trust land.** Lessees with a leasehold interest in federally owned lands or federal trust lands must report and remit the leasehold tax due directly to the department on an annual reporting basis.

[Statutory Authority: RCW 82.29A.140. 99-20-053, § 458-29A-600, filed 10/1/99, effective 11/1/99.]

Chapter 458-30 WAC

OPEN SPACE TAXATION ACT RULES

WAC

458-30-262	Agricultural land valuation—Interest rate—Property tax component.
458-30-360	Repealed.
458-30-590	Rates of inflation.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-30-360	Correction of erroneous classification or reclassification. [Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. 95-21-002, § 458-30-360, filed 10/4/95, effective 11/4/95.] Repealed by 99-17-042, filed 8/12/99, effective 9/12/99. Statutory Authority: RCW 84.34.141.
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WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component. For assessment year 2000, the interest rate and the property tax component that are to be used to value classified farm and agricultural lands are as follows:

- (1) The interest rate is 9.43 percent; and
- (2) The property tax component for each county is:

COUNTY	PERCENT	COUNTY	PERCENT
Adams	1.42	Lewis	1.23
Asotin	1.40	Lincoln	1.47
Benton	1.48	Mason	1.25
Chelan	1.31	Okanogan	1.30
Clallam	1.20	Pacific	1.24
Clark	1.34	Pend Oreille	1.30
Columbia	1.42	Pierce	1.52
Cowlitz	1.21	San Juan	0.85
Douglas	1.34	Skagit	1.29
Ferry	1.22	Skamania	1.06
Franklin	1.52	Snohomish	1.41
Garfield	1.66	Spokane	1.54
Grant	1.52	Stevens	1.19
Grays Harbor	1.40	Thurston	1.50
Island	1.05	Wahkiakum	1.11
Jefferson	1.26	Walla Walla	1.46
King	1.31	Whatcom	1.30
Kitsap	1.47	Whitman	1.42
Kittitas	1.07	Yakima	1.25
Klickitat	1.14		

[Statutory Authority: RCW 84.34.065 and 84.34.360. 99-24-034, § 458-30-262, filed 11/23/99, effective 1/1/00. Statutory Authority: RCW 84.34.065, 84.34.360 and 84.08.010. 99-01-067, § 458-30-262, filed 12/14/98, effective 1/1/99. Statutory Authority: RCW 84.34.065, 84.34.141 and 84.08.010. 98-01-178, § 458-30-262, filed 12/23/97, effective 1/1/98. Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and 84.34.070. 97-02-066, § 458-30-262, filed 12/31/96, effective 1/1/97. Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and 84.34.070. 96-01-095, § 458-30-262, filed 12/19/95, effective 1/1/96. Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and 84.08.070. 95-09-041, § 458-30-262, filed 4/14/95, effective 5/15/95. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.34.065. 94-05-062, § 458-30-262, filed 2/11/94, effective 3/14/94. Statutory Authority: RCW 84.08.010 and 84.08.070. 93-07-067, § 458-30-262, filed 3/17/93, effective 4/17/93; 92-03-068, § 458-30-262, filed 1/14/92, effective 2/14/92; 91-04-001, § 458-30-262, filed 1/24/91, effective 2/24/91; 90-24-087, § 458-30-262, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2) and 84.34.141. 90-02-080 (Order PT 90-1), § 458-30-262, filed 1/2/90, effective 2/2/90.]

WAC 458-30-360 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-30-590 Rates of inflation. (1) Introduction.

This section sets forth the rates of inflation discussed in WAC 458-30-550.

(2) **Rates of inflation.** The rates of inflation to be used for calculating the interest as required by WAC 458-30-550 are as follows:

YEAR	PERCENT	YEAR	PERCENT
1976	5.6	1977	6.5
1978	7.6	1979	11.3
1980	13.5	1981	10.3
1982	6.2	1983	3.2
1984	4.3	1985	3.5
1986	1.9	1987	3.7
1988	4.1	1989	4.8
1990	5.4	1991	4.2
1992	3.3	1993	2.7
1994	2.2	1995	2.3
1996	2.2	1997	2.1
1998	0.85	1999	1.42

[Statutory Authority: RCW 84.34.360 and 84.34.310. 99-24-035, § 458-30-590, filed 11/23/99, effective 12/24/99; 99-01-068, § 458-30-590, filed 12/14/98, effective 1/1/99; 98-01-179, § 458-30-590, filed 12/23/97, effective 1/1/98; 97-02-067, § 458-30-590, filed 12/31/96, effective 1/1/97; 96-01-094, § 458-30-590, filed 12/19/95, effective 1/1/96; 95-06-043, § 458-30-590, filed 2/24/95, effective 3/27/95. Statutory Authority: RCW 84.34.360. 94-11-098, § 458-30-590, filed 5/17/94, effective 6/17/94; 92-22-061, § 458-30-590, filed 10/29/92, effective 11/29/92. Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-590, filed 12/5/90, effective 1/5/91. Statutory Authority: Chapter 84.34 RCW and RCW 84.34.360. 89-05-010 (Order PT 89-3), § 458-30-590, filed 2/8/89. Statutory Authority: RCW 84.34.360. 88-07-004 (Order PT 88-4), § 458-30-590, filed 3/3/88; 87-07-009 (Order PT 87-3), § 458-30-590, filed 3/10/87.]

Chapter 458-40 WAC

TAXATION OF FOREST LAND AND TIMBER

WAC

458-40-540	Forest land values—2000.
458-40-660	Timber excise tax—Stumpage value tables—Stumpage value adjustments.

WAC 458-40-540 Forest land values—2000. The forest land values, per acre, for each grade of forest land for the 2000 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	2000 VALUES ROUNDED
1	1	\$245
	2	239
	3	227
	4	164
2	1	207
	2	199
	3	191
	4	138
3	1	161
	2	156
	3	155
	4	118
4	1	122
	2	119
	3	118
	4	90
5	1	89
	2	82
	3	81
	4	54
6	1	45
	2	41
	3	41
	4	39
7	1	22
	2	22
	3	21
	4	21
8		1

[Statutory Authority: RCW 82.32.300, 84.33.096 and 84.33.120. 00-02-018, § 458-40-540, filed 12/27/99, effective 1/1/00; 99-02-030, § 458-40-540, filed 12/30/98, effective 1/1/99; 98-02-014, § 458-40-540, filed 12/30/97, effective 1/1/98; 97-07-041, § 458-40-540, filed 3/14/97, effective 4/14/97; 96-02-055, § 458-40-540, filed 12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.300 and 84.33.120. 95-02-039, § 458-40-540, filed 12/30/94, effective 1/1/95. Statutory Authority: RCW 82.32.300. 94-02-046, § 458-40-540, filed 12/30/93, effective 1/1/94. Statutory Authority: RCW 84.33.120. 93-02-024, § 458-40-540, filed 12/31/92, effective 1/1/93; 91-24-026, § 458-40-540, filed 11/26/91, effective 1/1/92. Statutory Authority: RCW 84.33.120 and 84.08.010. 90-24-012, § 458-40-540, filed 11/27/90, effective 12/28/90; 89-23-095, § 458-40-540, filed 11/21/89, effective 12/22/89. Statutory Authority: RCW 84.33.120 and 84.33.130. 88-23-055 (Order FT-88-3), § 458-40-540, filed 11/15/88; 87-22-068 (Order FT-87-3), § 458-40-540, filed 11/4/87. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-540, filed 12/31/86.]

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) Introduction. This section sets forth the stumpage value tables and the stumpage value adjustments that are used to calculate the amount of timber excise tax owed by a timber harvester.

(2) **Stumpage value tables.** The following stumpage value tables are hereby adopted for use in reporting the taxable value of stumpage harvested during the period January 1 through June 30, 2000:

**TABLE 1—Stumpage Value Table
Stumpage Value Area 1
January 1 through June 30, 2000**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale¹

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$536	\$529	\$522	\$515	\$508
		2	442	435	428	421	414
		3	439	432	425	418	411
		4	439	432	425	418	411
Western Redcedar ²	RC	1	726	719	712	705	698
		2	726	719	712	705	698
		3	705	698	691	684	677
		4	689	682	675	668	661
Western Hemlock ³	WH	1	371	364	357	350	343
		2	370	363	356	349	342
		3	339	332	325	318	311
		4	334	327	320	313	306
Other Conifer	OC	1	371	364	357	350	343
		2	370	363	356	349	342
		3	339	332	325	318	311
		4	334	327	320	313	306
Red Alder	RA	1	258	251	244	237	230
		2	223	216	209	202	195
		3	180	173	166	159	152
Black Cottonwood	BC	1	81	74	67	60	53
		2	81	74	67	60	53
		3	15	8	1	1	1
Other Hardwood	OH	1	136	129	122	115	108
		2	116	109	102	95	88
		3	83	76	69	62	55
Douglas-fir Poles	DFL	1	845	838	831	824	817
Western Redcedar Poles	RCL	1	845	838	831	824	817
Chipwood	CHW	1	3	2	1	1	1
RC Shake Blocks	RCS	1	303	296	289	282	275
RC Shingle Blocks	RCF	1	121	114	107	100	93
RC & Other Posts ⁴	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁵	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁵	TFX	1	0.50	0.50	0.50	0.50	0.50

¹ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.
² Includes Alaska-Cedar.
³ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as White Fir.
⁴ Stumpage value per 8 lineal feet or portion thereof.
⁵ Stumpage value per lineal foot.

TABLE 2—Stumpage Value Table
Stumpage Value Area 2
 January 1 through June 30, 2000

Stumpage Values per Thousand Board Feet Net Scribner Log Scale¹

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$515	\$508	\$501	\$494	\$487
		2	461	454	447	440	433
		3	439	432	425	418	411
		4	351	344	337	330	323
Western Redcedar ²	RC	1	726	719	712	705	698
		2	726	719	712	705	698
		3	705	698	691	684	677
		4	689	682	675	668	661
Western Hemlock ³	WH	1	370	363	356	349	342
		2	370	363	356	349	342
		3	345	338	331	324	317
		4	333	326	319	312	305
Other Conifer	OC	1	370	363	356	349	342
		2	370	363	356	349	342
		3	345	338	331	324	317
		4	333	326	319	312	305
Red Alder	RA	1	258	251	244	237	230
		2	223	216	209	202	195
		3	180	173	166	159	152
Black Cottonwood	BC	1	81	74	67	60	53
		2	81	74	67	60	53
		3	15	8	1	1	1
Other Hardwood	OH	1	136	129	122	115	108
		2	116	109	102	95	88
		3	83	76	69	62	55
Douglas-fir Poles	DFL	1	845	838	831	824	817
Western Redcedar Poles	RCL	1	845	838	831	824	817
Chipwood	CHW	1	3	2	1	1	1
RC Shake Blocks	RCS	1	303	296	289	282	275
RC Shingle Blocks	RCF	1	121	114	107	100	93
RC & Other Posts ⁴	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁵	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁵	TFX	1	0.50	0.50	0.50	0.50	0.50

¹ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.

² Includes Alaska-Cedar.

³ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as White Fir.

⁴ Stumpage value per 8 lineal feet or portion thereof.

⁵ Stumpage value per lineal foot.

TABLE 3—Stumpage Value Table
Stumpage Value Area 3
 January 1 through June 30, 2000

Stumpage Values per Thousand Board Feet Net Scribner Log Scale¹

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ²	DF	1	\$536	\$529	\$522	\$515	\$508
		2	419	412	405	398	391
		3	419	412	405	398	391
		4	419	412	405	398	391
Western Redcedar ³	RC	1	726	719	712	705	698
		2	726	719	712	705	698
		3	705	698	691	684	677
		4	689	682	675	668	661
Western Hemlock ⁴	WH	1	371	364	357	350	343
		2	367	360	353	346	339
		3	333	326	319	312	305
		4	270	263	256	249	242
Other Conifer	OC	1	371	364	357	350	343
		2	367	360	353	346	339
		3	333	326	319	312	305
		4	270	263	256	249	242
Red Alder	RA	1	258	251	244	237	230
		2	223	216	209	202	195
		3	180	173	166	159	152
Black Cottonwood	BC	1	81	74	67	60	53
		2	81	74	67	60	53
		3	15	8	1	1	1
Other Hardwood	OH	1	136	129	122	115	108
		2	116	109	102	95	88
		3	83	76	69	62	55
Douglas-fir Poles	DFL	1	845	838	831	824	817
Western Redcedar Poles	RCL	1	845	838	831	824	817
Chipwood	CHW	1	3	2	1	1	1
RC Shake Blocks	RCS	1	303	296	289	282	275
RC Shingle Blocks	RCF	1	121	114	107	100	93
RC & Other Posts ⁵	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁶	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁶	TFX	1	0.50	0.50	0.50	0.50	0.50

¹ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.

² Includes Western Larch.

³ Includes Alaska-Cedar.

⁴ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as White Fir.

⁵ Stumpage value per 8 lineal feet or portion thereof.

⁶ Stumpage value per lineal foot.

TABLE 4—Stumpage Value Table
Stumpage Value Area 4
 January 1 through June 30, 2000

Stumpage Values per Thousand Board Feet Net Scribner Log Scale¹

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ²	DF	1	\$557	\$550	\$543	\$536	\$529
		2	450	443	436	429	422
		3	431	424	417	410	403
		4	431	424	417	410	403
Lodgepole Pine	LP	1	242	235	228	221	214
Ponderosa Pine	PP	1	350	343	336	329	322
		2	212	205	198	191	184
Western Redcedar ³	RC	1	726	719	712	705	698
		2	726	719	712	705	698
		3	705	698	691	684	677
		4	689	682	675	668	661
Western Hemlock ⁴	WH	1	414	407	400	393	386
		2	414	407	400	393	386
		3	355	348	341	334	327
		4	343	336	329	322	315
Other Conifer	OC	1	414	407	400	393	386
		2	414	407	400	393	386
		3	355	348	341	334	327
		4	343	336	329	322	315
Red Alder	RA	1	258	251	244	237	230
		2	223	216	209	202	195
		3	180	173	166	159	152
Black Cottonwood	BC	1	81	74	67	60	53
		2	81	74	67	60	53
		3	15	8	1	1	1
Other Hardwood	OH	1	136	129	122	115	108
		2	116	109	102	95	88
		3	83	76	69	62	55
Douglas-fir Poles	DFL	1	845	838	831	824	817
Western Redcedar Poles	RCL	1	845	838	831	824	817
Chipwood	CHW	1	3	2	1	1	1
RC Shake Blocks	RCS	1	303	296	289	282	275
RC Shingle Blocks	RCF	1	121	114	107	100	93
RC & Other Posts ⁵	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁶	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁶	TFX	1	0.50	0.50	0.50	0.50	0.50

¹ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.

² Includes Western Larch.

³ Includes Alaska-Cedar.

⁴ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as White Fir.

⁵ Stumpage value per 8 lineal feet or portion thereof.

⁶ Stumpage value per lineal foot.

TABLE 5—Stumpage Value Table
Stumpage Value Area 5
 January 1 through June 30, 2000

Stumpage Values per Thousand Board Feet Net Scribner Log Scale¹

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ²	DF	1	\$543	\$536	\$529	\$522	\$515
		2	431	424	417	410	403
		3	394	387	380	373	366
		4	394	387	380	373	366
Lodgepole Pine	LP	1	242	235	228	221	214
Ponderosa Pine	PP	1	350	343	336	329	322
		2	212	205	198	191	184
Western Redcedar ³	RC	1	726	719	712	705	698
		2	726	719	712	705	698
		3	705	698	691	684	677
		4	689	682	675	668	661
Western Hemlock ⁴	WH	1	378	371	364	357	350
		2	378	371	364	357	350
		3	342	335	328	321	314
		4	269	262	255	248	241
Other Conifer	OC	1	378	371	364	357	350
		2	378	371	364	357	350
		3	342	335	328	321	314
		4	269	262	255	248	241
Red Alder	RA	1	258	251	244	237	230
		2	223	216	209	202	195
		3	180	173	166	159	152
Black Cottonwood	BC	1	81	74	67	60	53
		2	81	74	67	60	53
		3	15	8	1	1	1
Other Hardwood	OH	1	136	129	122	115	108
		2	116	109	102	95	88
		3	83	76	69	62	55
Douglas-fir Poles	DFL	1	845	838	831	824	817
Western Redcedar Poles	RCL	1	845	838	831	824	817
Chipwood	CHW	1	3	2	1	1	1
RC Shake Blocks	RCS	1	303	296	289	282	275
RC Shingle Blocks	RCF	1	121	114	107	100	93
RC & Other Posts ⁵	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁶	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁶	TFX	1	0.50	0.50	0.50	0.50	0.50

¹ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.

² Includes Western Larch.

³ Includes Alaska-Cedar.

⁴ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as White Fir.

⁵ Stumpage value per 8 lineal feet or portion thereof.

⁶ Stumpage value per lineal foot.

TABLE 6—Stumpage Value Table
Stumpage Value Area 6
 January 1 through June 30, 2000

Stumpage Values per Thousand Board Feet Net Scribner Log Scale¹

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ²	DF	1	\$287	\$280	\$273	\$266	\$259
Engelmann Spruce	ES	1	233	226	219	212	205
Lodgepole Pine	LP	1	242	235	228	221	214
Ponderosa Pine	PP	1	350	343	336	329	322
		2	212	205	198	191	184
Western Redcedar ³	RC	1	539	532	525	518	511
True Firs ⁴	WH	1	222	215	208	201	194
Western White Pine	WP	1	346	339	332	325	318
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	516	509	502	495	488
Small Logs	SML	1	21	20	19	18	17
Chipwood	CHW	1	2	1	1	1	1
RC Shake & Shingle Blocks	RCF	1	92	85	78	71	64
LP & Other Posts ⁵	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁶	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁷	DFX	1	0.25	0.25	0.25	0.25	0.25

- ¹ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.
- ² Includes Western Larch.
- ³ Includes Alaska-Cedar.
- ⁴ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as White Fir.
- ⁵ Stumpage value per 8 lineal feet or portion thereof.
- ⁶ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
- ⁷ Stumpage value per lineal foot.

TABLE 7—Stumpage Value Table
Stumpage Value Area 7
 January 1 through June 30, 2000

Stumpage Values per Thousand Board Feet Net Scribner Log Scale¹

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ²	DF	1	\$287	\$280	\$273	\$266	\$259
Engelmann Spruce	ES	1	233	226	219	212	205
Lodgepole Pine	LP	1	246	239	232	225	218
Ponderosa Pine	PP	1	392	385	378	371	364
		2	305	298	291	284	277
Western Redcedar ³	RC	1	539	532	525	518	511
True Firs ⁴	WH	1	213	206	199	192	185
Western White Pine	WP	1	346	339	332	325	318
Hardwoods	OH	1	50	43	36	29	22

TABLE 7—Stumpage Value Table
Stumpage Value Area 7
 January 1 through June 30, 2000

Stumpage Values per Thousand Board Feet Net Scribner Log Scale¹

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Western Redcedar Poles	RCL	1	516	509	502	495	488
Small Logs	SML	1	22	21	20	19	18
Chipwood	CHW	1	2	1	1	1	1
RC Shake & Shingle Blocks	RCF	1	92	85	78	71	64
LP & Other Posts ⁵	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁶	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁷	DFX	1	0.25	0.25	0.25	0.25	0.25

- ¹ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.
- ² Includes Western Larch.
- ³ Includes Alaska-Cedar.
- ⁴ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as White Fir.
- ⁵ Stumpage value per 8 lineal feet or portion thereof.
- ⁶ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
- ⁷ Stumpage value per lineal foot.

TABLE 8—Stumpage Value Table
Stumpage Value Area 10
 January 1 through June 30, 2000

Stumpage Values per Thousand Board Feet Net Scribner Log Scale¹

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ²	DF	1	\$543	\$536	\$529	\$522	\$515
		2	436	429	422	415	408
		3	417	410	403	396	389
		4	417	410	403	396	389
Lodgepole Pine	LP	1	242	235	228	221	214
Ponderosa Pine	PP	1	350	343	336	329	322
		2	212	205	198	191	184
Western Redcedar ³	RC	1	712	705	698	691	684
		2	712	705	698	691	684
		3	691	684	677	670	663
		4	675	668	661	654	647
Western Hemlock ⁴	WH	1	400	393	386	379	372
		2	400	393	386	379	372
		3	341	334	327	320	313
		4	329	322	315	308	301
Other Conifer	OC	1	400	393	386	379	372
		2	400	393	386	379	372
		3	341	334	327	320	313
		4	329	322	315	308	301
Red Alder	RA	1	244	237	230	223	216
		2	209	202	195	188	181
		3	166	159	152	145	138

TABLE 8—Stumpage Value Table
Stumpage Value Area 10
 January 1 through June 30, 2000

Stumpage Values per Thousand Board Feet Net Scribner Log Scale¹

Species Name	Species Code Number	Timber Quality Code	Hauling Distance Zone Number				
			1	2	3	4	5
Black Cottonwood	BC	1	67	60	53	46	39
		2	67	60	53	46	39
		3	15	8	1	1	1
Other Hardwood	OH	1	122	115	108	101	94
		2	102	95	88	81	74
		3	69	62	55	48	41
Douglas-fir Poles	DFL	1	831	824	817	810	803
Western Redcedar Poles	RCL	1	831	824	817	810	803
Chipwood	CHW	1	3	2	1	1	1
RC Shake Blocks	RCS	1	303	296	289	282	275
RC Shingle Blocks	RCF	1	121	114	107	100	93
RC & Other Posts ⁵	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁶	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁶	TFX	1	0.50	0.50	0.50	0.50	0.50

¹ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-684 and 458-40-686.

² Includes Western Larch.

³ Includes Alaska-Cedar.

⁴ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as White Fir.

⁵ Stumpage value per 8 lineal feet or portion thereof.

⁶ Stumpage value per lineal foot.

(3) **Harvest value adjustments.** Harvest value adjustments relating to the various logging and harvest conditions shall be allowed against the stumpage values as set forth in subsection (2) of this section for the designated stumpage value areas. See WAC 458-40-670 for more information about these adjustments.

The following harvest adjustment tables are hereby adopted for use during the period of January 1 through June 30, 2000:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 10
 January 1 through June 30, 2000

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 40 thousand board feet per acre.	\$0.00
Class 2	Harvest of 20 thousand board feet to 40 thousand board feet per acre.	-\$4.00
Class 3	Harvest of 10 thousand board feet to but not including 20 thousand board feet per acre.	-\$7.00

TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7
 January 1 through June 30, 2000

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 4	Harvest of 5 thousand board feet to but not including 10 thousand board feet per acre.	-\$9.00
Class 5	Harvest of less than 5 thousand board feet per acre.	-\$10.00
II. Logging conditions		
Class 1	Most of the harvest unit has less than 30% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	Most of the harvest unit has slopes between 30% and 60%. Some rock outcrops or swamp barriers.	-\$17.00
Class 3	Most of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$25.00
Class 4	For logs that are yarded from stump to landing by helicopter. This does not include special forest products.	-\$145.00
Note: A Class 2 adjustment may be used for slopes less than 30% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department.		
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00
IV. Thinning (see WAC 458-40-610(21))		
Class 1	Average log volume of 50 board feet or more.	-\$25.00
Class 2	Average log volume of less than 50 board feet.	-\$125.00

TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7
 January 1 through June 30, 2000

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 3 thousand board feet to 8 thousand board feet per acre.	-\$7.00
Class 3	Harvest of less than 3 thousand board feet per acre.	-\$10.00
II. Logging conditions		
Class 1	Most of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	Most of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$20.00
Class 3	Most of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$30.00
Class 4	For logs that are yarded from stump to landing by helicopter. This does not include special forest products.	-\$145.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
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Note: A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department.

III. Remote island adjustment:

For timber harvested from a remote island - \$50.00

TABLE 11—Domestic Market Adjustment

Public Timber

Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska Yellow Cedar. (Stat. Ref. - 36 CFR 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Red Cedar only. (Stat. Ref. - 50 USC appendix 2406.1)

Private Timber

Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the Act of March 29, 1944, (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The adjustment amounts shall be as follows:

Class 1:	SVA's 1 through 6, and 10	\$0.00 per MBF
Class 2:	SVA 7	\$0.00 per MBF

Note: The adjustment will not be allowed on special forest products.

[Statutory Authority: RCW 82.32.300, 84.33.096 and 84.33.091. 00-02-019, § 458-40-660, filed 12/27/99, effective 1/1/00; 99-14-055, § 458-40-660, filed 6/30/99, effective 7/1/99; 99-02-032, § 458-40-660, filed 12/30/98, effective 1/1/99; 98-14-083, § 458-40-660, filed 6/30/98, effective 7/1/98; 98-02-015, § 458-40-660, filed 12/30/97, effective 1/1/98; 97-14-068, § 458-40-660, filed 6/30/97, effective 7/1/97. Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.091. 97-02-069, § 458-40-660, filed 12/31/96, effective 1/1/97; 96-14-063, § 458-40-660, filed 6/28/96, effective 7/1/96; 96-02-057, § 458-40-660, filed 12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.200. 95-18-027, § 458-40-660, filed 8/25/95, effective 9/25/95. Statutory Authority: RCW 82.32.300 and 84.33.096. 95-02-038, § 458-40-660, filed 12/30/94, effective 1/1/95. Statutory Authority: RCW 84.33.091, 84.32.300 [82.32.300] and 84.33.096. 94-14-048, § 458-40-660, filed 6/30/94, effective 7/1/94; 94-02-047, § 458-40-660, filed 12/30/93, effective 1/1/94; 93-14-051, § 458-40-660, filed 6/30/93, effective 7/1/93; 93-02-025, § 458-40-660, filed 12/31/92, effective 1/1/93; 92-14-083, § 458-40-660, filed 6/29/92, effective 7/1/92; 92-02-067, § 458-40-660, filed 12/31/91, effective 1/1/92. Statutory Authority: RCW 84.33.096 and 82.32.300. 91-14-077, § 458-40-660, filed 6/28/91, effective 7/1/91; 91-09-030, § 458-40-660, filed 4/12/91, effective 5/13/91; 91-02-088, § 458-40-660, filed 12/31/90, effective 1/31/91; 90-14-033, § 458-40-660, filed 6/29/90, effective 7/30/90; 90-02-049, § 458-40-660, filed 12/29/89, effective 1/29/90. Statutory Authority: Chapter 84.33 RCW and RCW 84.33.091. 89-14-051 (Order FT-89-2), §

458-40-660, filed 6/30/89; 89-02-027 (Order FT-88-5), § 458-40-660, filed 12/30/88; 88-14-032 (Order FT-88-2), § 458-40-660, filed 6/30/88; 88-02-026 (Order FT-87-5), § 458-40-660, filed 12/31/87. Statutory Authority: Chapter 84.33 RCW. 87-14-042 (Order 87-2), § 458-40-660, filed 6/30/87; 87-02-023 (Order 86-4), § 458-40-660, filed 12/31/86.]

Chapter 458-50 WAC

INTERCOUNTY UTILITIES AND TRANSPORTATION COMPANIES—ASSESSMENT AND TAXATION

WAC

458-50-010 Repealed.
458-50-050 Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-50-010 Assessment of public utilities—Purpose—Definitions. [Order PT 75-2, § 458-50-010, filed 3/19/75.] Repealed by 99-08-006, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 84.12.240.
458-50-050 Access to books, records, and property. [Order PT 75-2, § 458-50-050, filed 3/19/75.] Repealed by 99-08-006, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 84.12.240.

WAC 458-50-010 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-50-050 Repealed. See Disposition Table at beginning of this chapter.

Chapter 458-57 WAC

STATE OF WASHINGTON ESTATE AND TRANSFER TAX REFORM ACT RULES

WAC

458-57-005 Nature of estate tax, definitions.
458-57-015 Valuation of property, property subject to estate tax, how to calculate the tax.
458-57-025 Determining the tax liability of nonresidents.
458-57-035 Washington estate tax return to be filed—Penalty for late filing—Interest on late payments—Waiver or cancellation of penalty—Application of payment.
458-57-045 Administration of the tax—Releases, amended returns, refunds, heirs of escheat estates.
458-57-510 Repealed.
458-57-520 Repealed.
458-57-530 Repealed.
458-57-540 Repealed.
458-57-550 Repealed.
458-57-560 Repealed.
458-57-570 Repealed.
458-57-575 Repealed.
458-57-580 Repealed.
458-57-590 Repealed.
458-57-600 Repealed.
458-57-610 Repealed.
458-57-620 Repealed.
458-57-630 Repealed.
458-57-640 Repealed.
458-57-650 Repealed.
458-57-660 Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-57-510 Scope of rules. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-510, filed 8/11/83. Formerly WAC 458-57-010.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.

- 458-57-520 Nature of estate tax. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-520, filed 8/11/83. Formerly WAC 458-57-020.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-530 Property subject to estate tax. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-530, filed 8/11/83. Formerly WAC 458-57-030.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-540 Residents—Tax imposed. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-540, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-550 Valuation. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-550, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-560 Imposition of tax. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-560, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-570 Tax returns to be filed. [Statutory Authority: RCW 83.100.100. 86-12-024 (Order 86-1), § 458-57-570, filed 5/28/86; 83-17-033 (Order IT 83-2), § 458-57-570, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-575 Waiver or cancellation of penalties. [Statutory Authority: RCW 82.32.300 and 83.100.070. 99-03-010, § 458-57-575, filed 1/8/99, effective 2/8/99.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-580 Formula. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-580, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-590 Property "located in" Washington. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-590, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-600 Reciprocity exemption. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-600, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-610 Releases. [Statutory Authority: RCW 83.100.100. 86-12-024 (Order 86-1), § 458-57-610, filed 5/28/86; 83-17-033 (Order IT 83-2), § 458-57-610, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-620 Amended returns—Final determination. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-620, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-630 Administration—Rules. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-630, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-640 Escheat estates—Heirs—How located and proof. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-640, filed 8/11/83. Formerly WAC 458-57-410.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-650 Interest and penalties. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-650, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.
- 458-57-660 Refunds. [Statutory Authority: RCW 83.100.100. 83-17-033 (Order IT 83-2), § 458-57-660, filed 8/11/83.] Repealed by 99-15-095, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 83.100.200.

WAC 458-57-005 Nature of estate tax, definitions. (1)

Introduction. This rule describes the nature of Washington

state's estate tax as it is imposed by chapter 83.100 RCW (Estate and Transfer Tax Act). It also defines terms that will be used throughout chapter 458-57 WAC (Washington Estate and Transfer Tax Reform Act Rules).

(2) **Nature of Washington's estate tax.** The estate tax is neither a property tax nor an inheritance tax. It is a tax imposed on the transfer of the entire taxable estate and not upon any particular legacy, devise, or distributive share. Washington's estate tax is structured so that if an estate does not exceed the unified credit allowed by the Internal Revenue Service (IRS), it will not owe any estate tax to the state of Washington. The state tax effectively shifts a portion of the federal estate tax obligation to the state. Details of the federal estate tax can be found in part 20, subchapter B, chapter I, title 26, Code of Federal Regulations (or chapter 11 of subtitle B of the Internal Revenue Code).

The estate tax does not apply to completed absolute lifetime transfers. Section 2035(d) of the Internal Revenue Code generally exempts such transfers. To the extent permitted by this provision, lifetime transfers are not subject to Washington estate tax. The state of Washington does not have a gift tax.

(3) **Definitions.** The following terms and definitions are applicable throughout chapter 458-57 WAC:

(a) "Decedent" means a deceased individual;

(b) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him by the director;

(c) "Escheat" of an estate means that whenever any person dies, whether a resident of this state or not, leaving property in an estate subject to the jurisdiction of this state and without being survived by any person entitled to that same property under the laws of this state, such estate property shall be designated escheat property and shall be subject to the provisions of RCW 11.08.140 through 11.08.280.

(d) "Federal credit" means the maximum amount of the credit for state taxes allowed by section 2011 of the Internal Revenue Code. This credit is calculated using an "adjusted taxable estate" figure, which is simply the taxable estate, less sixty thousand dollars. However, when the term "federal credit" is used in reference to a generation-skipping transfer (GST), it means the maximum amount of the credit for state taxes allowed by section 2604 of the Internal Revenue Code;

(e) "Federal return" means any tax return required by chapter 11 (Estate tax) or chapter 13 (Tax on generation-skipping transfers) of the Internal Revenue Code;

(f) "Federal tax" means tax under chapter 11 (Estate tax) of the Internal Revenue Code. However, when used in reference to a GST, "federal tax" means the tax under chapter 13 (Tax on generation skipping transfers) of the Internal Revenue Code;

(g) "Generation-skipping transfer" or "GST" means a "generation-skipping transfer" as defined and used in section 2611 of the Internal Revenue Code;

(h) "Gross estate" means "gross estate" as defined and used in section 2031 of the Internal Revenue Code;

(i) "Internal Revenue Code" or "IRC" means the United States Internal Revenue Code of 1986, as amended or renumbered on January 1, 1995;

(j) "Nonresident" means a decedent who was domiciled outside Washington at the time of death;

(k) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof;

(l) "Person required to file the federal return" means any person required to file a return required by chapter 11 or 13 of the Internal Revenue Code, such as the personal representative of an estate, a transferor, trustee, or beneficiary of a generation-skipping transfer, or a qualified heir with respect to qualified real property, as defined and used in section 2032A(c) of the Internal Revenue Code;

(m) "Person responsible," means the person responsible for filing the federal and state returns and is the same person described in subsection (l) above;

(n) "Property," when used in reference to an estate tax transfer, means property included in the gross estate. However, when used in reference to a generation-skipping transfer, "property" means all real and personal property subject to the federal tax;

(o) "Resident" means a decedent who was domiciled in Washington at time of death;

(p) "State return" means the Washington Estate Tax Return required by RCW 83.100.050;

(q) "Transfer" means "transfer" as used in section 2001 of the Internal Revenue Code, or a disposition or cessation of qualified use as defined and used in section 2032A of the Internal Revenue Code; and

(r) "Trust" means "trust" under Washington law and any arrangement described in section 2652 of the Internal Revenue Code.

[Statutory Authority: RCW 83.100.200, 99-15-095, § 458-57-005, filed 7/21/99, effective 8/21/99.]

WAC 458-57-015 Valuation of property, property subject to estate tax, how to calculate the tax. (1) **Introduction.** This rule is intended to help taxpayers determine and pay the correct amount of estate tax with their state return. It explains the necessary steps for determining the tax, and provides examples of how the federal estate tax unified credit relates to the amount that must be reported on the state return. (If a nonresident decedent has property located within Washington at the time of death refer to WAC 458-57-025 to determine the amount of tax payable to Washington.)

(2) **Valuation.** The value of every item of property in a decedent's gross estate is its fair market value. However, the personal representative may elect to use the alternate valuation method under section 2032 of the Internal Revenue Code (IRC), and in that case the value is the fair market value at that date, including the adjustments prescribed in that section of the IRC.

The valuation of certain farm property and closely held business property, properly made for federal estate tax purposes pursuant to an election authorized by section 2032A of the IRC, is binding for state estate tax purposes.

(3) **Property subject to estate tax.** The estate tax is imposed on transfers of the taxable estate, as defined in section 2051 of the IRC.

(a) The first step in determining the value of the decedent's taxable estate is to determine the total value of the gross estate. The value of the gross estate includes the value of all the decedent's tangible and intangible property at the time of death. In addition, the gross estate may include property in which the decedent did not have an interest at the time of death. A decedent's gross estate for federal estate tax purposes may therefore be different from the same decedent's estate for local probate purposes. Sections 2031 through 2046 of the IRC provide a detailed explanation of how to determine the value of the gross estate. The following are examples of items that may be included in a decedent's gross estate and not in the probate estate:

- (i) Certain property transferred by the decedent during the decedent's lifetime without adequate consideration;
- (ii) Property held jointly by the decedent and others;
- (iii) Property over which the decedent had a general power of appointment;
- (iv) Proceeds of certain policies of insurance on the decedent's life annuities; and
- (v) Dower and curtesy of a surviving spouse or a statutory estate in lieu thereof.

(b) The value of the taxable estate is determined by subtracting the authorized exemption and deductions from the value of the gross estate. Under various conditions and limitations, deductions are allowable for expenses, indebtedness, taxes, losses, charitable transfers, and transfers to a surviving spouse. Sections 2051 through 2056A of the IRC provide a detailed explanation of how to determine the value of the taxable estate.

(4) **Imposition of Washington's estate tax.** A tax in an amount equal to the federal credit is imposed by RCW 83.100.030 upon the taxable estate of every decedent. Washington's estate tax is due in every case in which the federal estate tax exceeds the unified credit and there is credit available to be taken, with the exception that all applicable federal estate tax credits are to be applied to the estate's federal tax liability before the state estate tax liability is computed. In no event will an estate pay more than the amount of the credit available to be taken.

(a) The following table is taken from the IRC. It shows the maximum amount of federal credit available for state death taxes. The amount of federal credit computed is also the amount of Washington estate tax due.

(A)—Taxable estate, equal to or more than...	(B)—and, Taxable estate, less than...	(C)—Base credit on amount in column (A)	(D)—Rate of credit on excess over amount in column (A) (AS A PERCENT)
\$ 0	\$ 40,000	\$ 0	0.0
\$ 40,000	\$ 90,000	\$ 0	0.8
\$ 90,000	\$ 140,000	\$ 400	1.6
\$ 140,000	\$ 240,000	\$ 1,200	2.4
\$ 240,000	\$ 440,000	\$ 3,600	3.2
\$ 440,000	\$ 640,000	\$ 10,000	4.0
\$ 640,000	\$ 840,000	\$ 18,000	4.8
\$ 840,000	\$ 1,040,000	\$ 27,600	5.6

\$ 1,040,000	\$ 1,540,000	\$ 38,800	6.4
\$ 1,540,000	\$ 2,040,000	\$ 70,800	7.2
\$ 2,040,000	\$ 2,540,000	\$ 106,800	8.0
\$ 2,540,000	\$ 3,040,000	\$ 146,800	8.8
\$ 3,040,000	\$ 3,540,000	\$ 190,800	9.6
\$ 3,540,000	\$ 4,040,000	\$ 238,800	10.4
\$ 4,040,000	\$ 5,040,000	\$ 290,800	11.2
\$ 5,040,000	\$ 6,040,000	\$ 402,800	12.0
\$ 6,040,000	\$ 7,040,000	\$ 522,800	12.8
\$ 7,040,000	\$ 8,040,000	\$ 650,800	13.6
\$ 8,040,000	\$ 9,040,000	\$ 786,800	14.4
\$ 9,040,000	\$ 10,040,000	\$ 930,800	15.2
\$ 10,040,000		\$ 1,082,800	16.0

(b) The following are examples of how the estate tax is applied. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) A married woman dies, leaving her husband and children surviving. Her taxable estate, computed after allowance of the marital deduction, is \$700,000. The adjusted taxable estate is \$640,000 (\$700,000 - \$60,000). The Washington state estate tax due is \$18,000 (the base credit shown in column (C) on the first \$640,000).

(ii) A married man dies with all of his property passing to his wife, outright under a community property agreement. His marital deduction under section 2056 of the IRC reduces his federal taxable estate to zero. Because his taxable estate is zero, no Washington estate tax is due.

(iii) The federal taxable estate of a recent decedent is \$100,000. The adjusted taxable estate is \$40,000 (\$100,000 - \$60,000). No Washington estate tax is due. Section 2011 of the IRC provides for no credit unless the adjusted taxable estate exceeds \$40,000.

(iv) One year before a widower's death, he makes an absolute transfer of almost all of his property to his son. The widower's federal tax liability was computed on the basis of an "adjusted taxable gifts" value of \$750,000 (the amount of the transfer to the son) and a taxable estate of \$3,000 (the remainder of the widower's estate). Since no federal credit is available on an estate valued at \$3,000, no Washington estate tax is due, and there is no Washington gift tax.

(v) A widow dies, leaving a taxable estate of \$290,000. The amount of tax payable to the state of Washington, equivalent to the federal death tax credit, is computed as follows: Taxable estate of \$290,000, less \$60,000, equals an adjusted taxable estate of \$230,000. The unified credit (IRC Section 2011) on the first \$140,000 is \$1,200. The credit for the \$90,000 increment (\$230,000 - \$140,000) is \$2,160 (2.4% of \$90,000). The total Washington estate tax liability is \$3,360 (\$1,200 + \$2,160).

(vi) A widower dies, leaving a taxable estate of \$678,000. The amount of tax payable to the state of Washington, equivalent to the federal credit for state death taxes (section 2011 of the IRC), is computed as follows: Taxable estate of \$678,000, less \$60,000, equals an adjustable taxable estate of \$618,000. The table in subsection (4)(a) of this rule shows that the federal credit for state death taxes on the first \$440,000 is \$10,000. The credit for the \$178,000 increment (\$618,000 - \$440,000) is \$7,120 (.04 x \$178,000). The total Washington estate tax liability appears to be \$17,120 (\$10,000 + \$7,120).

However, when the person responsible calculates the federal estate tax and files the federal estate tax return for this widower's estate, he/she is able to apply other applicable federal estate tax credits before any of the credit for state death taxes is applied. In the end, only \$10,360 of the credit for state death taxes is applied to the federal estate tax, which leaves no payment due on the federal return. Since the amount of state estate tax liability cannot exceed the amount of state death tax credit actually applied to the federal tax, the amount of state estate tax due on the state return is limited to \$10,360.

[Statutory Authority: RCW 83.100.200. 99-15-095, § 458-57-015, filed 7/21/99, effective 8/21/99.]

WAC 458-57-025 Determining the tax liability of nonresidents. (1) Introduction. This rule discusses how property of nonresident decedents is taxed if that property is located within Washington at the time of death.

(2) **Nonresident decedents and Washington's estate tax.** If any decedent has tangible personal property and/or real property located in Washington state at the time of death, that property is subject to Washington's estate tax.

(a) **The reciprocity exemption.** A nonresident decedent's estate is exempt from Washington's estate tax if the nonresident's state of domicile exempts the property of Washington residents from estate, inheritance, or other death taxes normally imposed by the domicile state. The nonresident decedent must have been a citizen and resident of the United States at the time of death. Also, at the time of death the laws of the domicile state must have made specific reference to this state, or must have contained a reciprocal provision under which nonresidents of the domicile state were exempted from applicable death taxes with respect to property or transfers otherwise subject to the jurisdiction of that state.

In those instances where application of this provision results in loss of available federal credit which would otherwise be allowed for federal tax purposes, Washington will absorb that proportional share which is applicable to property within the jurisdiction of this state. Application of this provision will not act to increase the total tax obligation of the estate.

(b) **Property of a nonresident's estate which is located in Washington.** A nonresident decedent's estate may have either real property or tangible personal property located in Washington at the time of death.

(i) All real property physically situated in this state, with the exception of federal trust lands, and all interests in such property, are deemed "located in" Washington. Such interests include, but are not limited to:

(A) Leasehold interests;

(B) Mineral interests;

(C) The vendee's (but not the vendor's) interest in an executory contract for the purchase of real property;

(D) Trusts (beneficial interest in trusts of realty); and

(E) Decedent's interest in jointly owned property (e.g., tenants in common, joint with right of survivorship).

(ii) Tangible personal property of a nonresident decedent shall be deemed located in Washington only if:

(A) At the time of death the property is situated in Washington; and

(B) It is present for a purpose other than transiting the state.

(iii) For example, consider a nonresident decedent who was a construction contractor doing business as a sole proprietor. The decedent was constructing a large building in Washington. At the time of death, any of the decedent's equipment that was located at the job site in Washington, such as tools, earthmovers, bulldozers, trucks, etc., would be deemed located in Washington for estate tax purposes. Also, the decedent had negotiated and signed a purchase contract for speculative property in another part of Washington. For estate tax purposes, that real property should also be considered a part of the decedents' estate located in Washington.

(c) **Formula to calculate Washington's estate tax for nonresident decedents.** The amount of tax payable to Washington for a nonresident decedent equals the amount of federal credit multiplied by a fraction, the numerator of which is the value of the property located in Washington, and the denominator of which is the value of the decedent's gross estate. Restated: $\text{Federal Credit} \times (\text{Gross Value of Property in Washington} / \text{Decedent's Gross Estate}) = \text{Amount of Washington Estate Tax Due}$. This formula uses the gross value determined for federal estate tax purposes of any property located in Washington. No reduction will be allowed for any mortgages, liens, or other encumbrances or debts associated with such property except to the extent allowable in computing the gross estate for federal estate tax purposes.

[Statutory Authority: RCW 83.100.200, 99-15-095, § 458-57-025, filed 7/21/99, effective 8/21/99.]

WAC 458-57-035 Washington estate tax return to be filed—Penalty for late filing—Interest on late payments—Waiver or cancellation of penalty—Application of payment. (1) **Introduction.** This rule discusses the due date for filing of Washington's estate tax return and payment of the tax due. It explains that a penalty is imposed on the taxes due with the state return when the return is not filed on or before the due date, and that interest is imposed when the tax due is not paid by the due date. The rule also discusses the limited circumstances under which the law allows the department of revenue to cancel or waive the penalty, and the procedure for requesting that cancellation or waiver.

(2) **Filing the state return—Payment of the tax due.** The Washington estate tax return (state return) referred to in RCW 83.100.050 and a copy of the federal estate tax return (federal return) must be filed on or before the date that the federal return is required to be filed. The tax due with the state return must be paid on or before the date that the federal estate tax is required to be paid.

(a) Section 6075 of the Internal Revenue Code (IRC) requires that the federal return be filed within nine months after the date of the decedent's death. In the case of any estate for which a federal return must be filed, a state return must be filed with the Washington state department of revenue (department) on or before the date on which the federal return is required to be filed. (This may include a federally granted extension of time for filing. See subsection (2)(b).)

(b) Section 6081 of the IRC permits the granting of a reasonable extension of time for filing the federal return, generally not to exceed six months from the original due date. If a federal extension of the time to file is granted, the personal representative is required to file a true copy of that extension with the department on or before the original due date, or within thirty days of the issuance of the federal extension, whichever is later. RCW 83.100.050(2). If the personal representative fails to do so, the department may require the personal representative to file the state return on the date that the federal return would have been due had the federal extension not been granted.

(c) When the personal representative obtains an extension of time for payment of the federal tax, or elects to pay that tax in installments, the personal representative may choose to pay the state estate tax over the same time period and in the same manner as the federal tax. The personal representative is required to file a true copy of that extension with the department on or before the original due date, or within thirty days of the issuance of the federal extension, whichever is later. RCW 83.100.060(2). If the personal representative fails to do so, the department may require the personal representative to pay the state tax on the date that the federal tax would have been due had the federal extension not been granted.

(d) The department shall issue a release when Washington's estate tax has been paid. Upon issuance of a release, all property subject to the tax shall be free of any claim for the tax by the state. RCW 83.100.080.

(3) **The late filing penalty.** If the state return is not filed by the due date, or any extension of the state return's due date, the person required to file the federal return shall pay a penalty equal to five percent of the tax due for each month the report has not been filed. RCW 83.100.070. The total penalty may not exceed twenty-five percent of the tax. The penalty is the equivalent of five percent for each month, but is accrued on a daily basis for those periods less than a month. For any portion of a month, it is calculated by taking the five percent monthly rate and dividing it by the number of days from the beginning of the month through the date the return is filed, including the filing date.

(a) For example, assume a state return is due on February 3rd but is not filed until April 20th of the same year. The state return is delinquent starting with February 4th. The amount of tax due with the state return is \$10,000. The penalty should be computed as follows:

Feb 4-Mar 3	\$10,000 tax at 5% per month	\$500.00
Mar 4-Apr 3	\$10,000 tax at 5% per month	\$500.00
Apr 4-Apr 20	\$10,000 tax at .1667% x 17 days	\$283.39

Total delinquent penalty due on April 20th filing date	\$1,283.39
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In this example, the first two calendar months are complete and incur the full five percent penalty. The last portion of a month is a total of seventeen days, including both April 4th and April 20th. Since April has thirty days total, the five percent monthly rate is divided by the thirty days in April to arrive at a daily rate of .001667 (or .1667 percent). The daily

rate is then multiplied by the seventeen days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (.001667 x 17 days = .028339 or 2.8339 percent).

(b) If a federal extension of the due date is requested, the penalty provided for late filing of the state return will be imposed if the state return is filed after the due date and the federal extension is ultimately denied.

(4) **Interest is imposed on late payment.** The department is required by law to impose interest on the tax due with the state return if payment of the tax is not made on or before the due date. RCW 83.100.070. Interest applies to the delinquent tax only, and is calculated from the due date until the date of payment. Interest imposed for periods after December 31, 1996, will be computed at the annual variable interest rate described in RCW 82.32.050(2). Interest imposed for periods prior to January 1, 1997, will be computed at the rate of twelve percent per annum.

(5) **Waiver or cancellation of penalties.** RCW 83.100.070(3) authorizes the department to waive or cancel the penalty for late filing of the state return under limited circumstances.

(a) **Claiming the waiver.** A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The request must be made in the form of a letter and submitted to the department's special programs division. The person responsible bears the burden of establishing that the circumstances were beyond the responsible person's control and directly caused the late filing. The department will cancel or waive the late filing penalty imposed on the state return when the delinquent filing is the result of circumstances beyond the control of the person responsible for filing of the state return. The person responsible for filing the state return is the same person who is responsible for filing the federal return.

(b) **Circumstances eligible for waiver.** In order to qualify for a waiver of penalty the circumstances beyond the control of the person responsible for filing the state return must directly cause the late filing of the return. These circumstances are generally immediate, unexpected, or in the nature of an emergency. Such circumstances result in the person responsible not having reasonable time or opportunity to obtain an extension of their due date (see subsection (2)(b)) or to otherwise timely file the state return. Circumstances beyond the control of the responsible person include, but are not necessarily limited to, the following:

(i) The delinquency was caused by the death or serious illness of the person responsible for filing the state return or a member of the responsible person's immediate family. In order to qualify for penalty waiver, the death or serious illness must directly prevent the person responsible from having reasonable time or opportunity to arrange for timely filing of the state return. Generally, the death or serious illness must have occurred within sixty days prior to the due date, provided that a valid state return is filed within sixty days of the due date.

(ii) The delinquency was caused by an unexpected and unavoidable absence of the person responsible. Generally, this absence must be within sixty days prior to the due date, provided that a valid state return is filed within sixty days of

the due date. "Unavoidable absence of the person responsible" does not include absences because of business trips, vacations, personnel turnover, or personnel terminations.

(iii) The delinquency was caused by the destruction by fire or other casualty of estate records necessary for completion of the state return.

(iv) An estate tax return was timely filed, but was filed incorrectly with another state due to an issue of the decedent's domicile.

(v) A Washington estate tax return was properly prepared and timely filed, but was sent to the location for filing of the federal estate tax return.

(6) **Waiver or cancellation of interest.** Title 83 RCW (Estate Taxation) does not provide any circumstances that allow for waiver of the interest, even though penalty may be waived under limited circumstances (see subsection (5)).

(7) **Application of payment towards liability.** The department will apply taxpayer payments first to interest, next to penalties, and then to the tax, without regard to any direction of the taxpayer.

[Statutory Authority: RCW 83.100.200, 99-15-095, § 458-57-035, filed 7/21/99, effective 8/21/99.]

WAC 458-57-045 Administration of the tax—Releases, amended returns, refunds, heirs of escheat estates. (1) **Introduction.** This rule contains information on releases issued by the department for state estate taxes paid. It explains how and when an amended state return should be filed, and states the time limit for claiming a refund of overpaid taxes. The rule also gives several requirements for notification to the department when a claimed heir to an escheat estate is located.

(2) **Releases.** When the state estate taxes have been paid in full, the department will issue a release to the personal representative upon request. The request will include a completed state return and a copy of the completed federal return. The final determination of the amount of taxes due from the estate is contingent on receipt of a copy of the final closing letter issued by the Internal Revenue Service (IRS). The department may require additional information to substantiate information provided by the estate. The release issued by the department will not bind or estop the department in the event of a misrepresentation of facts.

(3) **Amended returns.** An amended state return must be filed with the department within five days after any amended federal return is filed with the IRS and must be accompanied by a copy of the amended federal return.

(a) Any time that the amount of federal tax due is adjusted or when there is a final determination of the federal tax due the person responsible must give written notification to the department. This notification must include copies of any final examination report, any compromise agreement, the state tax closing letter, and any other available evidence of the final determination.

(b) If any amendment, adjustment or final determination results in additional state estate tax due, interest will be calculated on the additional tax due at the annual variable interest rate described in RCW 82.32.050(2).

(4) **Refunds.** Claims for refund of taxes overpaid must be initiated within one year of the time the taxes are first paid to the state of Washington. Only the personal representative or the personal representative's retained counsel may make such claim. Any refund issued by the department will include interest at the existing statutory rate defined in RCW 82.32.050(2), computed from the date the overpayment was received by the department until the date it is mailed to the estate's representative. RCW 83.100.130(2).

(5) **Heirs of escheat estates.** Heirs to an estate may be located after the estate escheats to Washington. The personal representative of an escheat estate or a claimed heir must provide the department with all information and documentary evidence available that supports the heir's claim. All supporting documents must be in the English language when submitted to the department. The English translation of any foreign document shall be authenticated as reasonably required by the department.

(a) In all cases where there is a court hearing or the taking of a deposition on the question of a claimed heir, the personal representative shall give the department twenty days' written notice of such hearing or matter.

(b) The personal representative must give the department at least twenty days' written notice of the hearing on the final account and petition for distribution.

[Statutory Authority: RCW 83.100.200, 99-15-095, § 458-57-045, filed 7/21/99, effective 8/21/99.]

WAC 458-57-510 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-57-520 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-57-530 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-57-540 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-57-550 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-57-560 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-57-570 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-57-575 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-57-580 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-57-590 Repealed. See Disposition Table at beginning of this chapter.

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WAC 458-57-600 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-57-610 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-57-620 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-57-630 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-57-640 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-57-650 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-57-660 Repealed. See Disposition Table at beginning of this chapter.

Chapter 458-61 WAC REAL ESTATE EXCISE TAX

WAC

458-61-090 Date of sale—Interest and penalty.

WAC 458-61-090 Date of sale—Interest and penalty.

(1) **Introduction.** The tax imposed under chapter 82.45 RCW (Excise tax on real estate sales) is due and payable to the county treasurer as of the date of sale. This rule explains how to determine the date of sale. It also explains the application of interest and penalties when the tax liability is not paid within one month of the date of sale.

(2) **Date of sale.** The tax imposed under chapter 82.45 RCW is due and payable to the county treasurer as of the date of sale, whether or not the contract of sale or instrument of conveyance is recorded at that time.

(a) When a contract of sale or instrument of conveyance is signed and delivered by the grantor to an escrow agent licensed under chapter 18.44 RCW (Escrow Agent Registration Act), a title company, a title insurance company, or an attorney at law acting as an escrow agent, with instructions to deliver the instrument to the grantee upon the fulfillment of one or more conditions, the date of sale will be presumed to be the date that the instrument is presented for recording, subject to the following:

(i) A statement, as provided by WAC 458-61-150, signed by the escrow agent, the title company agent, the title insurance company agent, or attorney, is attached to the affidavit indicating that the instrument was delivered to such person in the capacity of an escrow agent; and

(ii) The date shown on the instrument is not more than ninety days prior to the date the affidavit is presented to the county treasurer for filing.

(b) In all other cases the date of sale will be presumed to be the date shown on the instrument. A taxpayer alleging a date of sale other than the instrument date has the burden of

proving that delivery of title or ownership of the property in exchange for consideration occurred on the date alleged.

(3) **Interest.** If the tax is paid within one month of the date of sale, interest will not be imposed. If the tax is not paid within one month of the date of sale, interest will be imposed on the total amount of the unpaid tax (both the state and local components) from the date of sale to the date of full payment. RCW 82.45.100(1) and 82.46.010(5). This interest is calculated on a monthly basis with a full month's interest accruing at the beginning of each month. Even if the full payment is not made at the end of a month, any portion of a month existing at the time of full payment will accrue a full month of interest. (See subsection (2)(b)(i) and (ii) and (c)(i) of this rule for examples of how interest is calculated and what day of each month interest accrues.)

(a) Interest imposed before January 1, 1999, is computed at the rate of one percent per month or portion of a month.

(b) Effective January 1, 1999, as a result of interest rate changes introduced in chapter 157, Laws of 1997, interest is computed per month or portion of a month at an annual variable interest rate determined as per RCW 82.32.050(2). This interest rate is adjusted on the first day of each January. The rate applied to any given month or portion of a month is the annual variable interest rate in effect at the beginning of that month, divided by twelve. Any interest imposed for a month or portion of a month that starts in December will be imposed at the interest rate effective in December, even though the interest rate may change on January 1st. The department of revenue will provide written notification to the county treasurers of the variable rate on or before December 1st of the year preceding the calendar year in which the variable interest rate applies. Other persons interested in the annual variable interest rate may contact the department of revenue special programs division directly.

(i) For example, assume a taxable real estate transaction with a November 20, 1998, date of sale. The original tax due is one thousand dollars and full payment is received on March 15, 1999. Interest begins on November 21st (the day after the date of sale). Prior to January 1, 1999, the interest rate for real estate excise tax is one percent per month. For this example only, assume that an annual variable interest rate of nine percent is effective on January 1, 1999, which is a monthly rate of seventy-five hundredths of a percent (nine percent annual variable interest rate divided by twelve months). Four months of interest is due and is computed as follows:

Nov 21 to Dec 20, 1998	\$1,000 tax at 1% per month	\$10.00
Dec 21 to Jan 20, 1999	\$1,000 tax at 1% per month	\$10.00
Jan 21 to Feb 20, 1999	\$1,000 tax at .75% per month	\$ 7.50
Feb 21 to Mar 15, 1999	\$1,000 tax at .75% per month	\$ 7.50
Total additional interest due with March 15, 1999, payment		\$35.00

In this example, note that a full month's interest applies effective February 21st even though the period of February 21st through March 15th is only a partial month.

(ii) As an additional example, assume a taxable real estate transaction with a February 1, 1999, date of sale. The original tax due is one thousand dollars and full payment is received on April 15, 1999. Interest begins on February 2nd (the day after the date of sale). For this example, assume that

an annual variable interest rate of nine percent is effective on January 1, 1999. Three months of interest is due and is computed as follows:

Feb 2 to Mar 1, 1999	\$1,000 tax at .75% per month	\$ 7.50
Mar 2 to Apr 1, 1999	\$1,000 tax at .75% per month	\$ 7.50
Apr 2 to Apr 15, 1999	\$1,000 tax at .75% per month	\$ 7.50
Total additional interest due with April 15, 1999, payment		\$22.50

(c) When interest must be calculated in a shorter month that does not have a day corresponding to the original date of sale, interest is computed on the first day of the following calendar month.

For example, assume a real estate transaction with a January 30th date of sale and a payment date of May 10th. Since February has only twenty-eight days (assuming it is not a leap year), the 28th of February most closely corresponds to the January 30th date of sale. If the tax liability is not paid on or before the last day of February (within one month of the date of sale), the liability is delinquent and the first two months of interest will be added on March 1st (the first day of the following calendar month). Interest begins on January 31st (the day after the date of sale). By the time the May 10th payment is made, four months of additional interest are due. For this example, assume that the original tax due is one thousand dollars and the annual variable interest rate is nine percent. The interest is computed as follows:

Jan 31 to Feb 28, 1999	\$1,000 tax at .75% per month	\$ 7.50
Mar 1 to Mar 30, 1999	\$1,000 tax at .75% per month	\$ 7.50
Mar 31 to Apr 30, 1999	\$1,000 tax at .75% per month	\$ 7.50
May 1 to May 10, 1999	\$1,000 tax at .75% per month	\$ 7.50
Total additional interest due with May 10, 1999, payment		\$30.00

(4) **Penalty.** In addition to the interest described in subsection (3) of this section, if the payment of any tax is not received by the county treasurer within one month of the date of sale a delinquent penalty applies. This penalty is imposed on the total amount of the unpaid tax (both state and local components). RCW 82.45.100(2) and 82.46.010(5).

(a) If tax is not paid:

(i) Within one month of the date of sale, a penalty of five percent of the amount of the tax will be added to the tax due;

(ii) Within two months of the date of sale, a total penalty of ten percent shall be added to the tax due; and

(iii) Within three months of the date of sale, a total penalty of twenty percent will be added to the tax due.

(b) Penalties will be assessed only against the grantor and will not be included in the lien arising under RCW 82.45.070.

[Statutory Authority: RCW 82.45.150 and 82.32.300. 99-14-053, § 458-61-090, filed 6/30/99, effective 7/31/99. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-090, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 82-15-070 (Order PT 82-5), § 458-61-090, filed 7/21/82.]

Chapter 458-65 WAC ABANDONED PROPERTY

WAC

458-65-010

through 458-65-040 Repealed.

DISPOSITION OF SECTIONS FORMERLY
CODIFIED IN THIS CHAPTER

458-65-010	Time limitations. [Rule UCP 1, § 458-65-010, filed 1/17/68.] Repealed by 99-14-056, filed 6/30/99, effective 7/31/99. Statutory Authority: RCW 63.29.370.
458-65-020	Use of department forms. [Statutory Authority: 1983 c 179 § 38. 83-17-098 (Order IT 83-3), § 458-65-020, filed 8/23/83.] Repealed by 99-08-007, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 63.29.370.
458-65-030	Simultaneous reporting and remittance of unclaimed property. [Statutory Authority: 1983 c 179 § 38. 83-17-098 (Order IT 83-3), § 458-65-030, filed 8/23/83.] Repealed by 99-08-007, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 63.29.370.
458-65-040	Maturity of automatically renewable instruments. [Statutory Authority: 1983 c 179 § 38. 83-17-098 (Order IT 83-3), § 458-65-040, filed 8/23/83.] Repealed by 99-08-007, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 63.29.370.

WAC 458-65-010 through 458-65-040 Repealed. See Disposition Table at beginning of this chapter.

Title 460 WAC

FINANCIAL INSTITUTIONS (SECURITIES DIVISION)

Chapters

460-21B	Broker-dealer practices.
460-22B	Salespersons of broker-dealers.
460-24A	Investment advisers.
460-28A	Advertisements.

Chapter 460-21B WAC

BROKER-DEALER PRACTICES

WAC

460-21B-060	Dishonest or unethical business practices—Broker-dealers.
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WAC 460-21B-060 Dishonest or unethical business practices—Broker-dealers. The phrase "dishonest or unethical practices" as used in RCW 21.20.110(7) as applied to broker-dealers is hereby defined to include any of the following:

(1) Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;

(2) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(3) Recommending to a customer to purchase, sell or exchange any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(4) Executing a transaction on behalf of a customer without authorization to do so;

(5) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(6) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(7) Failing to segregate customers' free securities or securities held in safekeeping;

(8) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the securities and exchange commission;

(9) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(10) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, a final or preliminary prospectus, and if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering;

(11) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

(12) Offering to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;

(13) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he/she is acting or with whom he/she is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

(14) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to